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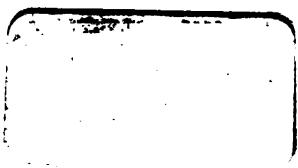
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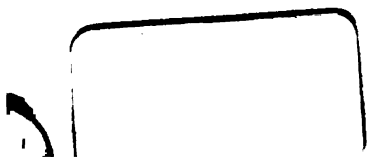
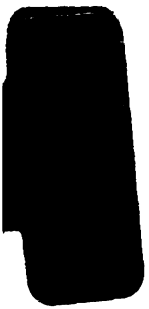
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THE



# COMPILED STATUTES

OF THE

STATE OF NEBRASKA,

COMPRISING

ALL LAWS OF A GENERAL NATURE IN FORCE  
JULY 1, 1881.

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PUBLISHED UNDER AUTHORITY OF THE LEGISLATURE,

BY

GUY A. BROWN.

---

OMAHA:

ELECTROTYPED, PRINTED AND BOUND BY GIBSON, MILLER & RICHARDSON.  
1881.

**154129**

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*Laws 1881, Chap. 79, p. 388.*

[Extract.]

\* \* \* \* \*

SEC. 4. The said statutes when published shall be accompanied by a certificate of the compiler that the same are true and accurate copies of the said original rolls, and thereupon the said statutes shall be competent evidence of the several acts and resolutions therein contained, in all courts of this state, without further proof or authentication.

\* \* \* \* \*

LINCOLN, NEBRASKA, July 1, 1881.

I, Guy A. Brown, appointed by the Legislature of the State of Nebraska, to compile the general laws of said State, do hereby certify that the several acts and resolutions contained in this volume are, with the exception of words contained in [ ], true and accurate copies of the original rolls on file in the office of the Secretary of State of said State.

GUY A. BROWN, COMPILER.

# STATE OFFICERS, 1881.

---

HIS EXCELLENCY ALBINUS NANCE, Governor,  
Osceola, Polk County.

EDMUND C. CARNS, Lieutenant-Governor,  
Seward, Seward County.

SAMUEL J. ALEXANDER, Secretary of State,  
Alexandria, Thayer County.

JOHN WALLICHS, Auditor Public Accounts,  
Grand Island, Hall County.

GEORGE M. BARTLETT, Treasurer of State,  
Lincoln, Lancaster County.

A. G. KENDALL, Commissioner of Public Lands and Buildings,  
St. Paul, Howard County.

W. W. W. JONES, Superintendent of Public Instruction,  
Lincoln, Lancaster County.

CALEB J. DILWORTH, Attorney General,  
Williamsburgh, Phelps County.

---

## *SUPREME COURT.*

Chief Justice, . . . . .	SAMUEL MAXWELL, . . . . .	Fremont.
Judges, . . . . .	GEORGE B. LAKE, . . . . .	Omaha.
	AMASA COBB, . . . . .	Lincoln.
Clerk and Reporter, . . . . .	GUY A. BROWN, . . . . .	Lincoln.

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S. B. POUND, . . . . .	Second District, . . . . .	Lincoln.
J. W. SAVAGE, . . . . .	Third District, . . . . .	Omaha.
G. W. POST, . . . . .	Fourth District, . . . . .	York.
WILLIAM GASLIN, Jr., . . . . .	Fifth District, . . . . .	Kearney.
J. B. BARNES, . . . . .	Sixth District, . . . . .	Ponca.

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## *DISTRICT ATTORNEYS.*

WILLIAM H. MORRIS, . . . . .	First District, . . . . .	Crete.
J. C. WATSON, . . . . .	Second District, . . . . .	Nebraska City.
N. J. BURNHAM, . . . . .	Third District, . . . . .	Omaha.
M. B. REESE, . . . . .	Fourth District, . . . . .	Wahoo.
V. BIERBOWER, . . . . .	Fifth District, . . . . .	Sidney.
C. C. McNISH, . . . . .	Sixth District, . . . . .	Wisner.

## PREFACE.

---

Under territorial government twelve sessions of the legislature of Nebraska sat and enacted laws which were published and bound in as many different volumes. The eleventh session of the territorial legislature passed as one act what has ever since been known as "THE REVISED STATUTES OF 1866." This is the only work entitled to be called a *revision* in the proper sense of the word. It was the result of the labors of E. ESTABROOK, assisted in the legislature by B. E. B. KENNEDY, SAMUEL MAXWELL, LORENZO CROUNSE, CHARLES H. BROWN, THOMAS L. GRIFFEY, GEORGE B. LAKE, JAMES THORN, JOHN CADMAN, E. H. CLARK, and others who had held prominent positions in the government of the territory and of whom many have held and still hold offices in the government of the state. It is one of the highest tributes to the labors of these gentlemen to say that though changed in many particulars, changed as the state has grown and enlarged, yet the body of their work, comprising the important chapters of Corporations, Decedents, and the Civil Code, has remained nearly intact from the legislation of sixteen sessions of the state legislature.

Two attempts at revision have since been made, one in 1872-1873 by the appointment of the compiler of the present edition, and the other in 1877 by the appointment of S. H. CALHOUN, of Otoe, JOHN H. AMES, of Lancaster, and A. H. CONNER, of Buffalo. The first appointment resulted in the publication of what has since been known as "THE GENERAL STATUTES OF 1873." That volume was a compilation merely of the acts then in force, including the general laws passed that same year, which were not published separately. Although some mistakes occurred in its printing, yet without any act authorizing its admission as evidence, it has been generally received by the people as a correct statement of the law; used by the bar, and construed by the bench in its decisions.

The second appointment made in 1877, resulted only in the passage by the legislature of 1879 of a few acts, the work of the gentlemen referred to, notably those in reference to Cities of the Second Class and Villages, Revenue and Roads, which, with amendments made in 1881 form chapters of this present work. No further attempt was made at revision during the year 1881, but the passage of the various enactments of 1875, 1877, 1879 and 1881, changing, altering and repealing the statutes of 1866 and 1873, gave rise to this present edition published under the provisions of the act of 1881, chap. 79, p. 388, and found on pages 529 and 530 of this volume.

In preparing this edition for the press, it has been the aim of the compiler to faithfully follow the enrolled laws, mistakes and errors of enrollment included; but while giving such mistakes, he has also discovered errors in the publication of "The General Statutes of 1873," as well as the various session laws since 1873, and corrected them in this edition. Yet with all possible care, typographical and other errors will occur in the publication of any work, unknown till the book is

from the press. It will be noticed that words inclosed in [ ] are not in the enrolled laws, but inserted as the meaning which the compiler has believed the legislature designed, and as in many instances appear in the engrossed bills, but not in the enrolled bills signed by the governor.

The arrangement and classification of the laws here given will appear from an examination of the work. The titles of the various acts are inserted in proper notes, and the original numbering of the sections preserved as far as possible, especially in the codes, as all the decisions of the supreme court refer to the original numbered sections, and more especially in view of the peculiar provisions of section 11, Art. [III] of the Constitution. Proper foot notes show also the time of the taking effect of the various acts as well as decisions of the Supreme Court contained in the ten volumes of reports now published.

The compiler has had no little difficulty in preparing an index, satisfactory even to himself. He has endeavored however to give the *subject matter* and point out the *page or pages* where the law thereon may be found. No attempt has been made to give the *details* of the law in the index. The searcher having ascertained from the index the whereabouts of the *subject* must look to the page for the *details*. The black letter catch word preceding each section is designed as a help thereto.

From my fellow laborer and personal friend of many years standing, H. H. WHEELER, I have received valuable aid and assistance without which I could not have accomplished this work.

To HENRY GIBSON, senior member of the firm whose name appears on the title page, I am also greatly indebted. With industry untiring, patient when I have been impatient, he has taken a personal interest and supervision in the progress of this work through the press. As I would have this book appear, so he and the force under him have labored night and day, in season and out of season, to have it appear. Few publishers in the country could have had this book printed and bound in the short space of time given him to do the work, none who would have treated the idiosyncracies of the author any better.

GUY A. BROWN.

Lincoln, July 1, 1881.

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# CONSTITUTION

OF THE

# UNITED STATES OF AMERICA.

---

## PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

## ARTICLE I.

### SECTION I.

1. **[Legislative power.]**—All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a senate and house of representatives.

### SECTION II.

1. **[House of representatives.]**—The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. **[Representatives—Qualifications.]**—No person shall be a representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. **[Apportionment.]**—Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. **[Vacancies.]**—When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. **[Speaker—Power of impeachment.]**—The house of representatives shall chuse their speaker and other officers, and shall have the sole power of impeachment.

### SECTION III.

1. **[Senate.]**—The senate of the United States shall be composed of two

senators from each state, chosen by the legislature thereof, for six years ; and each senator shall have one vote.

2. [Senators classed—Vacancies.]—Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class, shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year ; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. [Senators—Qualifications.]—No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. [President of senate.]—The vice-president of the United States shall be president of the senate ; but shall have no vote unless they be equally divided.

5. [Officers.]—The senate shall chuse their other officers, and also a president, *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6. [Court of impeachment.]—The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside ; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. [Extent of judgment in case of impeachment.]—Judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States ; but the party convicted shall nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

#### SECTION IV.

1. [Elections, how regulated.]—The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state, by the legislature thereof, but the congress may, at any time, by law, make or alter such regulations, except as to the places of chusing senators.

2. [Meetings of congress.]—The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

#### SECTION V.

1. [To judge of the election of its members—Quorum.]—Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business ; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

2. [Rules.]—Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

3. [Journals.]—Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy ; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. [Adjournment.]—Neither house, during the session of congress, shall,



without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

## SECTION VI.

1. [**Compensation—Privilege.**].—The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to or returning from the same - and for any speech or debate in either house, they shall not be questioned in any other place.

2. [**Holding other office.**].—No senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house, during his continuance in office.

## SECTION VII.

1. [**Revenue bills.**].—All bills for raising revenue shall originate in the house of representatives, but the senate may propose or concur with amendments as on other bills.

2. [**Power and duty of president in relation to bills.**].—Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections, at large, on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days, (Sundays excepted,) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case, it shall not be a law.

3. [**Same—Joint resolutions.**].—Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

## SECTION VIII.

[**General powers.**].—The congress shall have power—

1. [**Taxes.**].—To lay and collect taxes, duties, imposts and excises; to pay the debts, and to provide for the common defense and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States.

2. [**Loans.**].—To borrow money on the credit of the United States.

3. [**Commerce.**].—To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

4. [**Naturalization—Bankruptcy.**].—To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

5. **[Money—Weights.]**—To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

6. **[Counterfeiting.]**—To provide for the punishment of counterfeiting the securities and current coin of the United States.

7. **[Post-offices.]**—To establish post-offices and post roads.

8. **[Patents.]**—To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

9. **[Tribunals—Felonies on sea.]**—To constitute tribunals inferior to the supreme court. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

10. **[War.]**—To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

11. **[Armies.]**—To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

12. **[Navy.]**—To provide and maintain a navy.

13. **[Land and naval forces.]**—To make rules for the government and regulation of the land and naval forces.

14. **[Militia.]**—To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

15. **[Same.]**—To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

16. **[Legislation—Seat of government, etc.]**—To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square), as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: and,

17. **[Laws necessary for execution of powers.]**—To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

#### SECTION IX.

1. **[Importation of certain persons.]**—The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. **[Habeas corpus.]**—The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. **[Attainder—Ex-post facto laws.]**—No bill of attainder or *ex-post facto* law shall be passed.

4. **[Direct taxes.]**—No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. **[Taxes on exports—Inter-state commerce.]**—No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another.

6. **[Expenditures.]**—No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and ac-

count of the receipts and expenditures of all public money shall be published from time to time.

7. **[Titles—Gifts to U. S. officers.]**—No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state.

#### SECTION X.

1. **[Powers prohibited to the states.]**—No state shall enter into any treaty, alliance or confederation, grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex-post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. **[Powers of the states under the sanction of congress.]**—No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and controul of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

### ARTICLE II.

#### SECTION I.

1. **[Executive power.]**—The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows:

2. **[Presidential electors.]**—Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress, but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. **[Meeting—Proceedings.]**—The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately chuse, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, chuse the president. But in chusing the president, the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall chuse from them, by ballot, the vice-president.\*

\*Annulled; see amendments, art. 12.

4. **[Time of choosing electors.]**—The congress may determine the time of chusing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. **[President—Qualifications.]**—No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president, neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. **[Vacancy—Acting president.]**—In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may, by law, provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. **[Same—Compensation.]**—The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. **[Oath.]**—Before he enters on the execution of his office, he shall take the following oath or affirmation.

9. **[Same.]**—“I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States.”

#### SECTION II.

1. **[Powers of the president.]**—The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States. He may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. **[Same—Official appointments.]**—He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. **[President may fill vacancies.]**—The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

#### SECTION III.

1. **[Duties of president.]**—He shall from time to time, give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

#### SECTION IV. •

1. **[How officers removed from office.]**—The president, vice-president,

and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III.

#### SECTION I.

1. [**Judicial power.**—The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish.

The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

#### SECTION II.

1. [**Same—Extent.**—The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens or subjects.

2. [**Supreme court—Jurisdiction.**—In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases, before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

3. [**Trial of crimes.**—The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

#### SECTION III.

1. [**Treason.**—Treason against the United States shall consist only in levying war against them, or in adhering to their enemies; giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. [**Same—Punishment.**—The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

### ARTICLE IV.

#### SECTION I.

1. [**Faith given acts, etc., of states.**—Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

#### SECTION II.

1. [**Reciprocity of citizenship.**—The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. [**Criminals to be delivered up.**—A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. [**Runaway slaves, etc.**—No person held to service or labour in one

state, under the laws thereof escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

#### SECTION III.

1. **[Admission of new states.]**—New states may be admitted by the congress into this Union, but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. **[Powers of congress over territories, etc.]**—The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

#### SECTION IV.

1. **[Guarantee and protection of each state.]**—The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

### ARTICLE V.

1. **[Amendments, how made.]**—The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by convention in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: *Provided*, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

### ARTICLE VI.

1. **[Debts assumed.]**—All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

2. **[Supreme law of the land.]**—This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby; anything in the constitution or laws of any state to the contrary notwithstanding.

3. **[Officers to support this constitution—No religious test.]**—The senators and representatives, before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

### ARTICLE VII.

**[Ratification.]**—The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

In witness whereof, we have hereunto subscribed our names.

ATTEST:

WILLIAM JACKSON, Secretary.

GEORGE WASHINGTON,  
President.

# AMENDMENTS TO THE CONSTITUTION.

## ARTICLE I.

**[Religion—Free speech—Press—Right of petition.]**—Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

## ARTICLE II.

**[People may keep arms.]**—A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

## ARTICLE III.

**[Quartering of soldiers.]**—No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

## ARTICLE IV.

**[Unreasonable searches and seizures.]**—The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## ARTICLE V.

**[Presentment or indictment in criminal cases—Rights of private property.]**—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

## ARTICLE VI.

**[Rights of accused.]**—In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process, for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

## ARTICLE VII.

**[Right of trial by jury.]**—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

## ARTICLE VIII.

**[Bail—Fines—Punishments.]**—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## ARTICLE IX.

[**Reserved rights.**].—The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## ARTICLE X.

[**Reserved powers.**].—The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.

## ARTICLE XI.

[**Restriction of judicial powers.**].—The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state.

## ARTICLE XII.

1. [**Election of president.**].—The electors shall meet in their respective states and vote by ballot, for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves: they shall name in their ballot the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. [**Election of vice-president.**].—The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum, for the purpose, shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. [**Eligibility of vice-president.**].—But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

## ARTICLE XIII.

1. [**Slavery abolished.**].—Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. [**Same.**].—Congress shall have power to enforce this article by appropriate legislation.

## ARTICLE XIV.

SECTION 1. [**Citizenship defined—Rights guaranteed.**].—All persons



born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**SEC. 2. [Apportionment of representatives.]**—Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislatures thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty one-years of age in such state.

**SEC. 3. [Political disabilities of rebels.]**—No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

**SEC. 4. [Inviolability of public debt.]**—The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**SEC. 5.** The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## ARTICLE XV.

**SECTION 1. [Elective franchise.]**—The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

**SEC. 2.** The congress shall have power to enforce this article by appropriate legislation.

## ENABLING ACT.

An act to enable the people of Nebraska to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states.

[Passed April 19, 1864, 13th U. S. Statutes at Large, Page 47.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the inhabitants of that portion of the territory of Nebraska included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves a constitution and state government, with the name aforesaid, which state, when so formed, shall be admitted into the Union as hereinafter provided.

**SEC. 2. [Boundaries].**—*And be it further enacted,* That the said state of Nebraska shall consist of all the territory included within the following boundaries, to-wit: Commencing at a point formed by the intersection of the western boundary of the state of Missouri with the fortieth degree of north latitude; extending thence due west along said fortieth degree of north latitude to a point formed by its intersection with the twenty-fifth degree of longitude west from Washington; thence north along said twenty-fifth degree of longitude to a point formed by its intersection with the forty-first degree of north latitude; thence west along said forty-first degree of north latitude to a point formed by its intersection with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude to a point formed by its intersection with the forty-third degree of north latitude; thence east along said forty-third degree of north latitude to the Reya Paha river; thence down the middle of the channel of said river, with its meanderings, to its junction with the Niobrara river; thence down the middle of the channel of said Niobrara river, and following the meanderings thereof, to its junction with the Missouri river; thence down the middle of the channel of said Missouri river, and following the meanderings thereof, to the place of beginning.

**SEC. 3. [Constitutional convention].**—*And be it further enacted,* That all persons qualified by law to vote for representatives to the general assembly of said territory shall be qualified to be elected; and they are hereby authorized to vote for and choose representatives to form a convention, under such rules and regulations as the governor of said territory may prescribe, and also to vote upon the acceptance or rejection of such constitution as may be formed by said convention, under such rules and regulations as said convention may prescribe; and if any of said citizens are enlisted in the army of the United States, and are still

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NOTE.—The act cited 4 Neb., 127, 438. The history of the formation and adoption of the constitution stated, 2 Neb., 206.

SEC. 2. By a subsequent act of congress (16 U. S. Statutes at Large, p. 93) the boundary line between Nebraska and Dakota was re-defined. That act was approved by the state legislature, (1871, 131. G. S. 1021,) and is as follows:

“*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That so soon as the State of Nebraska, through her legislature, has given her consent thereto, the center of the main channel of the Missouri river shall be the boundary line between the state of Nebraska and the territory of Dakota, between the following points, to-wit: Commencing at a point in the center of said main channel, north of the west line of section twenty-four, in township twenty-nine, north of range eight, east of the sixth principal meridian, and running along the same to a point west of the most northerly portion of fractional section seventeen, of township twenty-nine, north of range nine, east of said meridian in the state of Nebraska, as meandered and shown by the plats and surveys of said sections originally made and now on file in the general land office.

SEC. 2. “*And be it further enacted,* that the respective jurisdictions of said state and territory (and of the United States), shall extend to and over the territory within their limits, according to the lines herein designated, to all intents and purposes, as fully and completely as if no change had taken place in the channel of said Missouri river; and the secretary of the interior is hereby authorized, and required to cause to be made all necessary surveys and meanderings, and to order the transfer of all plats, papers, and documents which may be necessary in the premises.

within said territory, they shall be permitted to vote at their place of rendezvous; and if any are absent from said territory, by reason of their enlistment in the army of the United States, they shall be permitted to vote at their place of service under the rules and regulations in each case to be prescribed as aforesaid; and the aforesaid representatives to form the aforesaid convention shall be apportioned among the several counties in said territory in proportion to the population as near as may be, and said apportionment shall be made for said territory by the governor, United States district attorney, and chief justice thereof, or any two of them. And the governor of said territory shall, by proclamation, on or before the first Monday of May next, order an election of the representatives aforesaid to be held on the first Monday in June thereafter throughout the territory; and such election shall be conducted in the same manner as is prescribed by the laws of said territory regulating elections therein for members of the house of representatives; and the number of members to said convention shall be the same as now constitute both branches of the legislature of the aforesaid territory.

**SEC. 4. [Meeting and duties of convention.]**—*And be it further enacted,* That the members of the convention thus elected shall meet at the capital of said territory on the first Monday in July next, and after organization shall declare, on behalf of the people of said territory, that they adopt the constitution of the United States; whereupon the said convention shall be, and it is hereby, authorized to form a constitution and state government; *Provided,* That the constitution when formed shall be republican, and not repugnant to the constitution of the United States and the principles of the Declaration of Independence; *And provided further,* That said constitution shall provide, by an article forever irrevocable, without the consent of the congress of the United States: *First.* That slavery or involuntary servitude shall be forever prohibited in said state. *Second.* That perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship. *Third.* That the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said state shall never be taxed higher than the land belonging to residents thereof; and that no taxes shall be imposed by said state on lands or property therein belonging to or which may hereafter be purchased by the United States.

**SEC. 5. [Submission to vote of the people.]**—*And be it further enacted,* That in case a constitution and state government shall be formed for the people of said territory of Nebraska, in compliance with the provisions of this act, that said convention forming the same shall provide by ordinance for submitting said constitution to the people of said state for their ratification or rejection at an election to be held on the second Tuesday of October, one thousand eight hundred and sixty-four, at such places and under such regulations as may be prescribed therein, at which election the qualified voters, as hereinbefore provided, shall vote directly for or against the proposed constitution, and the returns of said elections shall be made to the acting governor of the territory, who, together with the United States district attorney and chief justice of the said territory, or any two of them, shall canvass the same, and if a majority of legal votes shall be cast for said constitution in said proposed state, the said acting governor shall certify the same to the president of the United States, together with a copy of said constitution and ordinances; whereupon it shall be the duty of the president of the United States to issue his proclamation declaring the state admitted into the Union on an equal footing with the original states, without any further action whatever on the part of congress.

**SEC. 6. [Congressman and officers.]**—*And be it further enacted,* That until the next general census shall be taken, said state of Nebraska shall be entitled to one representative in the house of representatives of the United States,

which representative, together with the governor and state and other officers provided for in said constitution, may be elected on the same day a vote is taken for or against the proposed constitution and state government.

**SEC. 7. [School lands.]**—*And be it further enacted,* That sections numbered sixteen and thirty-six in every township, and when such sections have been sold or otherwise disposed of by any act of congress, other lands, equivalent thereto, in legal subdivisions of not less than one quarter-section, and as contiguous as may be, shall be, and are hereby, granted to said state for the support of common schools.

**SEC. 8. [Grant for public buildings.]**—*And be it further enacted,* That provided the state of Nebraska shall be admitted into the Union in accordance with the foregoing provisions of this act, that twenty entire sections of the unappropriated public lands within said state, to be selected and located by direction of the legislature thereof, on or before the first day of January, Anno Domini eighteen hundred and sixty-eight, shall be and they are hereby granted, in legal subdivisions of not less than one hundred and sixty acres, to said state, for the purpose of erecting public buildings at the capital of said state for legislative and judicial purposes, in such manner as the legislature shall prescribe.

**SEC. 9. [Grant for penitentiary.]**—*And be it further enacted,* That fifty other entire sections of land, as aforesaid, to be selected and located as aforesaid, in legal subdivisions as aforesaid, shall be, and they are hereby, granted to said state for the purpose of erecting a suitable building for a penitentiary or state prison in the manner aforesaid.

**SEC. 10. [Grant for university.]**—*And be it further enacted,* That seventy-two other sections of land shall be set apart and reserved for the use and support of a state university, to be selected in manner as aforesaid, and to be appropriated and applied as the legislature of said state may prescribe for the purpose named, and for no other purpose.

**SEC. 11. [Salt springs.]**—*And be it further enacted,* That all salt springs within said state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said state for its use, the said land to be selected by the governor thereof, within one year after the admission of the state, and when so selected to be used or disposed of on such terms conditions and regulations as the legislature shall direct, *Provided,* That no salt spring or lands, the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall, by this act, be granted to said state.

**SEC. 12. [Five per cent. fund.]**—*And be it further enacted,* That five per centum of the proceeds of the sales of all public lands lying within said state, which have been or shall be sold by the United States prior or subsequent to the admission of said state into the Union, after deducting all expenses incident to the same, shall be paid to the said state for the support of common schools.

**SEC. 13. [Laws of the United States—The state and judicial district.]**—*And be it further enacted,* That from and after the admission of the said state of Nebraska into the Union in pursuance of this act, the laws of the United States, not locally inapplicable, shall have the same force and effect within the said state as elsewhere within the United States; and said state shall constitute one judicial district, and be called the district of Nebraska.

**SEC. 14. [Expenses of constitutional convention.]**—*And be it further enacted,* That any unexpended balance of the appropriations for said territorial legislative expenses of Nebraska remaining for the fiscal years eighteen hundred and sixty-three and eighteen hundred and sixty-four, or so much thereof as may be necessary, shall be applied to and used for defraying the expenses of said convention and for the payment of the members thereof, under the same rules, regulations, and rates as are now provided by law for the payment of the territorial legislature.

Approved, April 19, 1864.

# CONSTITUTION

OF THE

# STATE OF NEBRASKA.

IN FORCE NOVEMBER 1, 1875.

## PREAMBLE.

We, the people, grateful to Almighty God for our freedom, do ordain and establish the following declaration of rights and frame of government, as the constitution of the state of Nebraska.

## ARTICLE I.—BILL OF RIGHTS.

**SECTION 1. [Equal rights.]**—All persons are by nature free and independent; and have certain inherent and inalienable rights; among these are life, liberty, and the pursuit of happiness. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed.

**SEC. 2. [Slavery.]**—There shall be neither slavery nor involuntary servitude in this state, otherwise than for punishment of crime, whereof the party shall have been duly convicted.

**SEC. 3. [Process.]**—No person shall be deprived of life, liberty, or property, without due process of law.

**SEC. 4. [Religious freedom.]**—All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect, or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

**SEC. 5. [Freedom of speech.]**—Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

**SEC. 6. [Trial by jury.]**—The right of trial by jury shall remain inviolate, but the legislature may authorize trial by a jury of a less number than twelve men, in courts inferior to the district court.

**SEC. 7. [Search and seizure.]**—The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable

cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

**Sec. 8. [Habeas corpus.]**—The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law.

**Sec. 9. [Bail.]**—All persons shall be bailable by sufficient sureties, except for treason and murder, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Sec. 10. [Criminal offenses.]**—No person shall be held to answer for a criminal offense, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in case of impeachment, and in cases arising in the army and navy or in the militia, when in actual service in time of war or public danger, unless on a presentment or indictment of a grand jury; *Provided*, That the legislature may, by law, provide for holding persons to answer for criminal offenses on information of a public prosecutor; and may, by law, abolish, limit, change, amend, or otherwise regulate the grand jury system.

**Sec. 11. [Impartial trials.]**—In all criminal prosecutions the accused shall have the right to appear and defend in person or by counsel, to demand the nature and cause of accusation, and to have a copy thereof; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

**Sec. 12. [Twice in jeopardy.]**—No person shall be compelled, in any criminal case, to give evidence against himself, or be twice put in jeopardy for the same offense.

**Sec. 13. [Justice administered without delay.]**—All courts shall be open, and every person, for any injury done him in his lands, goods, person or reputation, shall have a remedy by due course of law, and justice administered without denial or delay.

**Sec. 14. [Treason against the state]** shall consist only in levying war against the state, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

**Sec. 15. All penalties** shall be proportioned to the nature of the offense, and no conviction shall work corruption of blood or forfeiture of estate; nor shall any person be transported out of the state for any offense committed within the state.

**Sec. 16. No bill of attainder *ex post facto* law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed.**

**Sec. 17. The military** shall be in strict subordination to the civil power.

**Sec. 18. No soldier** shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

**Sec. 19. [Right of petition.]**—The right of the people, peaceably, to assemble to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.

**Sec. 20. [Imprisonment for debt.]**—No person shall be imprisoned for debt in any civil action on *mesne* or final process, unless in cases of fraud.

**Sec. 21. [Private property.]**—The property of no person shall be taken or damaged for public use without just compensation therefor.

**Sec. 22. All elections** shall be free; and there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise.

Sec. 11. 4 Neb. 226, 547. 5 Id. 34. 11 Neb. 1.

Sec. 12. 6 Neb. 120.

Sec. 16. 1 Neb. 381. 3 Id. 393. 6 Id. 33. 7 Id. 179.

Sec. 21. 1 Neb. 30. 2 Id. 399. 3 Id. 241.

SEC. 23. **The writ of error** shall be a writ of right in all cases of felony; and in capital cases shall operate as a supersedeas to stay the execution of the sentence of death until the further order of the supreme court in the premises.

SEC. 24. **The right** to be heard in all civil cases in the court of last resort, by appeal, error, or otherwise, shall not be denied.

SEC. 25. [**Aliens.**—No distinction shall ever be made by law between resident aliens and citizens in reference to the possession, enjoyment, or descent of property.

SEC. 26. **This enumeration of rights** shall not be construed to impair or deny others retained by the people, and all powers not herein delegated remain with the people.

#### ARTICLE II.—DISTRIBUTION OF POWERS.

SECTION 1. The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

#### ARTICLE [III.]—LEGISLATIVE.

SECTION 1. **The legislative authority** is vested in a senate and house of representatives.

SEC. 2. [**Census.**—The legislature shall provide by law for an enumeration of the inhabitants of the state in the year eighteen hundred and eighty-five, and every ten years thereafter; and at its first regular session after each enumeration, and also after each enumeration made by the authority of the United States, but at no other time, the legislature shall apportion the senators and representatives according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy.

SEC. 3. [**Number of members.**—The house of representatives shall consist of eighty-four members, and the senate shall consist of thirty members, until the year eighteen hundred and eighty, after which time the number of members of each house shall be regulated by law; but the number of representatives shall never exceed one hundred, nor that of senators thirty-three. The sessions of the legislature shall be biennial, except as otherwise provided in this constitution.

SEC. 4. **The terms of office** of members of the legislature shall be two years, and they shall each receive for their services three dollars for each days attendance during the session, and ten cents for every mile they shall travel in going to and returning from the place of meeting of the legislature on the most usual route: *Provided however*, That they shall not receive pay for more than forty days at any one session; and neither members of the legislature nor employees shall receive any pay or perquisites other than their per diem and mileage.

SEC. 5. [**Who not eligible.**—No person shall be eligible to the office of senator or member of the house of representatives, who shall not be an elector, and have resided within the district from which he is elected for the term of one year next before his election, unless he shall have been absent on the public business of the United States, or of this state. And no person elected as aforesaid shall hold his office after he shall have removed from such district.

SEC. 6. [**Same.**—No person holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be eligible to or have a seat in the legislature; but this provision shall not extend to precinct or township officers, justices of the peace, notaries public, or officers of the mi-

Sec. 23. 8 Neb. 24.

Sec. 24. 5 Neb. 458.

Sec. 25. 2 Neb. 9.

Sec. 1. 7 Neb. 314.

Sec. 3. See chapter 5 entitled "Apportionment."

litia; nor shall any person interested in a contract with, or an unadjusted claim against the state, hold a seat in the legislature.

**SEC. 7. The session** of the legislature shall commence at 12 o'clock (noon) on the first Tuesday in January, in the year next ensuing the election of members thereof, and at no other time, unless as provided by this constitution. A majority of the members elected to each house shall constitute a quorum. Each house shall determine the rules of its proceedings, and be the judge of the election, returns, and qualifications of its members; shall choose its own officers; and the senate shall choose a temporary president to preside when the lieutenant-governor shall not attend as president, or shall act as governor. The secretary of state shall call the house of representatives to order at the opening of each new legislature, and preside over it until a temporary presiding officer thereof shall have been chosen and shall have taken his seat. No member shall be expelled by either house, except by a vote of two-thirds of all the members elected to that house, and no member shall be twice expelled for the same offense. Each house may punish by imprisonment any person, not a member thereof, who shall be guilty of disrespect to the house, by disorderly or contemptuous behavior in its presence, but no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior.

**SEC. 8. [Journals].**—Each house shall keep a journal of its proceedings, and publish them (except such parts as may require secrecy), and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journal. All votes in either house shall be *viva voce*. The doors of each house and of — committee of the whole, shall be open, unless when the business shall be such as ought to be kept secret. Neither house shall, without the consent of the other, adjourn for more than three days.

**SEC. 9. [Bills].**—Any bill may originate in either house of the legislature, except bills appropriating money, which shall originate only in the house of representatives, and all bills passed by one house may be amended by the other.

**SEC. 10. [Enacting clause].**—The enacting clause of a law shall be, "Be it enacted by the legislature of the state of Nebraska," and no law shall be enacted except by bill. No bill shall be passed unless by assent of a majority of all the members elected to each house of the legislature. And the question upon final passage shall be taken immediately upon its last reading, and the yeas and nays shall be entered upon the journal.

**SEC. 11. [Title—Amendment of laws].**—Every bill and concurrent resolution shall be read at large on three different days in each house, and the bill and all amendments thereto shall be printed before the vote is taken upon its final passage. No bill shall contain more than one subject, and the same shall be clearly expressed in its title. And no law shall be amended unless the new act contains the section or sections so amended, and the section or sections so amended shall be repealed. The presiding officer of each house shall sign, in the presence of the house over which he presides, while the same is in session and capable of transacting business, all bills and concurrent resolutions passed by the legislature.

**SEC. 12. [Privileges of members].**—Members of the legislature, in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the legislature, and for fifteen days next before the commencement and after the termination thereof.

**SEC. 13. [Disabilities].**—No person elected to the legislature shall receive any civil appointment within this state, from the governor and senate during the term for which he has been elected, and all such appointments, and all votes given for any such member for any such office or appointment, shall be void. Nor shall any member of the legislature, or any state officer, be interested, either di-



rectly or indirectly, in any contract with the state, county, or city, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof.

**SEC. 14. [Impeachment.]**—The senate and house of representatives, in joint convention, shall have the sole power of impeachment, but a majority of the members elected must concur therein. Upon the entertainment of a resolution to impeach by either house, the other house shall at once be notified thereof, and the two houses shall meet in joint convention for the purpose of acting upon such resolution within three days of such notification. A notice of an impeachment of any officer other than a justice of the supreme court, shall be forthwith served upon the chief justice by the secretary of the senate, who shall thereupon call a session of the supreme court to meet at the capital within ten days after such notice to try the impeachment. A notice of an impeachment of a justice of the supreme court shall be served by the secretary of the senate upon the judge of the judicial district within which the capital is located, and he thereupon shall notify all the judges of the district court in the state to meet with him within thirty days at the capital, to sit as a court to try such impeachment, which court shall organize by electing one of its number to preside. No person shall be convicted without the concurrence of two-thirds of the members of the court of impeachment, but judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, profit or trust in this state, but the party impeached, whether convicted or acquitted, shall nevertheless be liable to prosecution and punishment according to law. No officer shall exercise his official duties after he shall have been impeached and notified thereof, until he shall have been acquitted.

**SEC. 15. [Prohibited special legislation.]**—The legislature shall not pass local or special laws in any of the following cases, that is to say: For granting divorces. Changing the names of persons or places. Laying out, opening, altering and working roads or highways. Vacating roads, town plats, streets, alleys and public grounds. Locating or changing county seats. Regulating county and township offices. Regulating the practice of courts of justice. Regulating the jurisdiction and duties of justices of the peace, police magistrates and constables. Providing for changes of venue in civil and criminal cases. Incorporating cities, towns and villages, or changing or amending the charter of any town, city or village. Providing for the election of officers in townships, incorporated towns or cities. Summoning or impaneling grand or petit jurors. Providing for the bonding of cities, towns, precincts, school districts, or other municipalities. Providing for the management of public schools. Regulating the interest on money. The opening and conducting of any election, or designating the place of voting. The sale or mortgage of real estate belonging to minors or others under disability. The protection of game or fish. Chartering or licensing ferries or toll bridges. Remitting fines, penalties or forfeitures. Creating, increasing and decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed. Changing the law of descent. Granting to any corporation, association or individual, the right to lay down railroad tracks, or amending existing charters for such purpose. Granting to any corporation, association, or individual, any special or exclusive privileges, immunity or franchise whatever. In all other cases where a general law can be made applicable, no special law shall be enacted.

**SEC. 16. [Extra compensation.]**—The legislature shall never grant any extra compensation to any public officer, agent, servant or contractor, after the services shall have been rendered, or the contract entered into. Nor shall the compensation of any public officer be increased or diminished during his term of office.

**SEC. 17. [Salt springs.]**—The legislature shall never alienate the salt springs belonging to this state.

SEC. 18. [**Donations of land.**—Lands under control of the state shall never be donated to railroad companies, private corporations or individuals.

SEC. 19. [**Appropriations.**—Each legislature shall make appropriations for the expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, and all appropriations shall end with such fiscal quarter. And whenever it is deemed necessary, to make further appropriations for deficiencies, the same shall require a two-thirds vote of all the members elected to each house, and shall not exceed the amount of revenue authorized by law to be raised in such time. Bills making appropriations for the pay of members and officers of the legislature, and for the salaries of the officers of the government, shall contain no provision on any other subject.

SEC. 20. [**Vacancies.**—All offices created by this constitution shall become vacant by the death of the incumbent, by removal from the state, resignation, conviction of a felony, impeachment, or becoming of unsound mind. And the legislature shall provide by general law for the filling of such vacancy when no provision is made for that purpose in this constitution.

SEC. 21. [**Lotteries.**—The legislature shall not authorize any games of chance, lottery, or gift enterprise, under any pretense, or for any purpose whatever.

SEC. 22. [**Money, how drawn from treasury.**—No allowance shall be made for the incidental expenses of any state officer except the same be made by general appropriation, and upon an account specifying each item. No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, and on the presentation of a warrant issued by the auditor thereon, and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. The auditor shall, within sixty days after the adjournment of each session of the legislature, prepare and publish a full statement of all moneys expended at such session, specifying the amount of each item, and to whom and for what paid.

SEC. 23. [**Members not liable for debate.**—No member of the legislature shall be liable in any civil or criminal action whatever for words spoken in debate.

SEC. 24. [**Acts take effect, when.**—No act shall take effect until three calendar months after the adjournment of the session at which it passed, unless in case of emergency (to be expressed in the preamble or body of the act) the legislature shall, by a vote of two thirds of all the members elected to each house otherwise direct. All laws shall be published in book form within sixty days after the adjournment of each session, and distributed among the several counties in such manner as the legislature may provide.

#### ARTICLE [IV.]—LEGISLATIVE APPORTIONMENT.\*

Until otherwise provided by law, senatorial and representative districts shall be formed, and senators and representatives apportioned, as follows:

##### SENATORIAL DISTRICTS.

District No. 1. Shall consist of the county of Richardson, and be entitled to two senators.

District No. 2. Shall consist of the county of Nemaha, and be entitled to one senator.

District No. 3. Shall consist of the county of Otoe, and be entitled to two senators.

District No. 4. Shall consist of the County of Cass, and be entitled to one senator.

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\*NOTE.—Apportionment now regulated by law. See Chap. 5.

SEC. 19. 5 Neb. 566.

SEC. 22. 4 Neb. 216. 6 Id. 17, 512. 9 Id. 469.

SEC. 24. 8 Neb. 148.

District No. 5. Shall consist of the county of Douglas, and be entitled to two senators.

District No. 6. Shall consist of the counties of Douglas and Sarpy, and be entitled to one senator.

District No. 7. Shall consist of the county of Washington, and be entitled to one senator.

District No. 8. Shall consist of the county of Dodge, and be entitled to one senator.

District No. 9. Shall consist of the county of Cuming, and be entitled to one senator.

District No. 10. Shall consist of the counties of Burt and Dakota, and be entitled to one senator.

District No. 11. Shall consist of the counties of Madison, Stanton, Wayne, Pierce, Antelope and Boone, and be entitled to one senator.

District No. 12. Shall consist of the counties of Dixon, Cedar, Knox, Holt, and the unorganized territory west of Holt, and be entitled to one senator.

District No. 13. Shall consist of the counties of Hall, Howard, Merrick, Greeley, and the unorganized territory north of Greeley, and be entitled to one senator.

District No. 14. Shall consist of the counties of Platte and Colfax, and be entitled to one senator.

District No. 15. Shall consist of the counties of Butler and Polk, and be entitled to one senator.

District No. 16. Shall consist of the county of Saunders, and be entitled to one senator.

District No. 17. Shall consist of the county of Lancaster, and be entitled to two senators.

District No. 18. Shall consist of the counties of Johnson and Pawnee, and be entitled to one senator.

District No. 19. Shall consist of the counties of Gage and Jefferson, and be entitled to one senator.

District No. 20. Shall consist of the county of Saline, and be entitled to one senator.

District No. 21. Shall consist of the county of Seward, and be entitled to one senator.

District No. 22. Shall consist of the counties of York and Hamilton, and be entitled to one senator.

District No. 23. Shall consist of the counties of Fillmore and Clay, and be entitled to one senator.

District No. 24. Shall consist of the counties of Adams, Webster, Nuckolls and Thayer, and be entitled to one senator.

District No. 25. Shall consist of the counties of Buffalo, Kearney, Franklin, Harlan, Phelps, Sherman, Valley, and the unorganized territory west of Sherman and Valley, and senatorial district number thirteen (13), and be entitled to one senator.

District No. 26. Shall consist of the counties of Lincoln, Dawson, Gosper, Furnas, Red Willow, Frontier, Hitchcock, Dundy, Chase, Keith, Cheyenne, and the unorganized territory west of Frontier, and between Frontier and Chase, and be entitled to one senator.

#### REPRESENTATIVE DISTRICTS.

District No. 1. Shall consist of the county of Richardson, and be entitled to four representatives.

District No. 2. Shall consist of the county of Pawnee, and be entitled to two representatives.

District No. 3. Shall consist of the county of Gage, and be entitled to two representatives.

- District No. 4. Shall consist of the county of Johnson, and be entitled to two representatives.
- District No. 5. Shall consist of the county of Nemaha, and be entitled to three representatives.
- District No. 6. Shall consist of the county of Otoe, and be entitled to four representatives.
- District No. 7. Shall consist of the county of Lancaster, and be entitled to four representatives.
- District No. 8. Shall consist of the county of Saunders, and be entitled to three representatives.
- District No. 9. Shall consist of the county of Cass, and be entitled to three representatives.
- District No. 10. Shall consist of the county of Sarpy, and be entitled to one representative.
- District No. 11. Shall consist of the county of Douglas, and be entitled to eight representatives.
- District No. 12. Shall consist of the county of Dodge, and be entitled to two representatives.
- District No. 13. Shall consist of the county of Washington, and be entitled to two representatives.
- District No. 14. Shall consist of the county of Burt, and be entitled to one representative.
- District No. 15. Shall consist of the county of Cuming, and be entitled to two representatives.
- District No. 16. Shall consist of the county of Dakota, and be entitled to one representative.
- District No. 17. Shall consist of the county of Dixon, and be entitled to one representative.
- District No. 18. Shall consist of the county of Jefferson, and be entitled to one representative.
- District No. 19. Shall consist of the county of Thayer, and be entitled to one representative.
- District No. 20. Shall consist of the county of Nuckolls, and be entitled to one representative.
- District No. 21. Shall consist of the county of Webster, and be entitled to one representative.
- District No. 22. Shall consist of the county of Adams, and be entitled to one representative.
- District No. 23. Shall consist of the county of Clay, and be entitled to one representative.
- District No. 24. Shall consist of the county of Fillmore, and be entitled to one representative.
- District No. 25. Shall consist of the county of Saline, and be entitled to three representatives.
- District No. 26. Shall consist of the county of Seward, and be entitled to two representatives.
- District No. 27. Shall consist of the county of York, and be entitled to two representatives.
- District No. 28. Shall consist of the county of Hamilton, and be entitled to one representative.
- District No. 29. Shall consist of the county of Hall, and be entitled to one representative.
- District No. 30. Shall consist of the county of Buffalo, and be entitled to one representative.
- District No. 31. Shall consist of the county of Lincoln, and be entitled to one representative.
- District No. 32. Shall consist of the county of Harlan, and be entitled to one representative.

District No. 33. Shall consist of the counties of Howard and Greeley, and be entitled to one representative.

District No. 34. Shall consist of the county of Merrick, and be entitled to one representative.

District No. 35. Shall consist of the county of Polk, and be entitled to one representative.

District No. 36. Shall consist of the county of Butler, and be entitled to one representative.

District No. 37. Shall consist of the county of Colfax, and be entitled to one representative.

District No. 38. Shall consist of the county of Platte, and be entitled to one representative.

District No. 39. Shall consist of the county of Madison, and be entitled to one representative.

District No. 40. Shall consist of the county of Cedar, and be entitled to one representative.

District No. 41. Shall consist of the counties of Burt and Dodge, and be entitled to one representative.

District No. 42. Shall consist of the counties of Stanton, Wayne and Pierce, and be entitled to one representative.

District No. 43. Shall consist of the counties of Knox and Holt, and the unorganized territory west of Holt, and be entitled to one representative.

District No. 44. Shall consist of the county of Antelope, and be entitled to one representative.

District No. 45. Shall consist of the counties of Boone, Valley, Sherman, and the unorganized territory west of Sherman and Valley counties, and west of the thirteenth senatorial district, and be entitled to one representative.

District No. 46. Shall consist of the counties of Dawson and Frontier, and be entitled to one representative.

District No. 47. Shall consist of the counties of Franklin and Kearney, and be entitled to one representative.

District No. 48. Shall consist of the counties of Furnas, Phelps and Gosper, and be entitled to one representative.

District No. 49. Shall consist of the counties of Cheyenne, Keith, Dundy, Chase, Hitchcock, Red Willow, and the unorganized territory north of the county of Hitchcock, and be entitled to one representative.

District No. 50. Shall consist of the counties of Cass and Saunders, and be entitled to one representative.

District No. 51. Shall consist of the counties of Platte, Colfax and Butler, and be entitled to one representative.

District No. 52. Shall consist of the counties of Fillmore and Clay, and be entitled to one representative.

#### ARTICLE [v.]—EXECUTIVE DEPARTMENT.

SECTION 1. [Officers.]—The executive department shall consist of a governor, lieutenant-governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction, attorney-general, and commissioner of public lands and buildings, who shall each hold his office for the term of two years from the first Thursday and [after] the first Tuesday in January next after his election, and until his successor is elected and qualified; *Provided, however, That* the first election of said officers shall be held on the Tuesday succeeding the first Monday in November, 1876, and each succeeding election shall be held at the same relative time in each even year thereafter. The governor, secretary of the state, auditor of public accounts, and treasurer, shall reside at the seat of government during their terms of office, and keep the public records, books and papers there, and shall perform such duties as may be required by law.

**SEC. 2. [Persons ineligible.]**—No person shall be eligible to the office of governor, or lieutenant-governor, who shall not have attained the age of thirty years, and been for two years next preceeding his election a citizen of the United States and of this state. None of the officers of the executive department shall be eligible to any other state office during the period for which they shall have been elected.

**SEC. 3. The treasurer** shall be ineligible to the office of treasurer for two years next after the expiration of two consecutive terms for which he was elected.

**SEC. 4. The returns of every election** for the officers of the executive department shall be sealed up and transmitted by the returning officers to the secretary of state, directed to the speaker of the house of representatives, who shall, immediately after the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of each house of the legislature, who shall, for that purpose, assemble in the hall of the house of representatives. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more have an equal and the highest number of votes, the legislature shall, by joint vote, choose one of such persons for said office. Contested elections for all of said offices shall be determined by both houses of the legislature, by joint vote, in such manner as may be prescribed by law.

**SEC. 5. [Impeachment.]**—All civil officers of this state shall be liable to impeachment for any misdemeanor in office.

**SEC. 6. [Executive power.]**—The supreme executive power shall be vested in the governor, who shall take care that the laws be faithfully executed.

**SEC. 7. [Message of governor.]**—The governor shall, at the commencement of each session, and at the close of his term of office, and whenever the legislature may require, give to the legislature information by message, of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall account to the legislature, and accompany his message with a statement of all moneys received and paid out by him from any funds subject to his order, with vouchers, and, at the commencement of each regular session, present estimates of the amount of money required to be raised by taxation for all purposes.

**SEC. 8. [Convening legislature.]**—The governor may, on extraordinary occasions, convene the legislature by proclamation, stating therein the purpose for which they are convened, and the legislature shall enter upon no business except that for which they were called together.

**SEC. 9. [Proroguing legislature.]**—In case of a disagreement between the two houses with respect to the time of adjournment, the governor may, on the same being certified to him by the house first moving the adjournment, adjourn the legislature to such time as he thinks proper, not beyond the first day of the next regular session.

**SEC. 10. [Appointments.]**—The governor shall nominate and, by and with the advice and consent of the senate (expressed by a majority of all the senators elected, voting by yeas and nays), appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise by law or herein provided for; and no such officer shall be appointed or elected by the legislature.

**SEC. 11. [Vacancies.]**—In case of a vacancy during the recess of the senate, in any office which is not elective, the governor shall make a temporary appointment until the next meeting of the senate, when he shall nominate some person to fill such office; and any person so nominated, who is confirmed by the senate (a majority of all the senators elected concurring by voting yeas and nays),

SEC. 2. 9 Neb. 466.

SEC. 8. 3 Neb. 409.

SEC. 10. 7 Neb. 45.

shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the senate, shall be again nominated for the same office at the same session, unless at request of the senate, or be appointed to the same office during the recess of the legislature.

**SEC. 12. [Removal of officers.]**—The governor shall have power to remove any officer whom he may appoint, in case of incompetency, neglect of duty, or malfeasance in office; and he may declare his office vacant, and fill the same as herein provided in other cases of vacancy.

**SEC. 13. [Pardoning power.]**—The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the legislature at its next session, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the legislature, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the reprieve, commutation, or pardon.

**SEC. 14. [Militia.]**—The governor shall be commander-in-chief of the military and naval forces of the state (except when they shall be called into the service of the United States), and may call out the same to execute the laws, suppress insurrection, and repel invasion.

**SEC. 15. [Veto.]**—Every bill passed by the legislature, before it becomes a law, and every order, resolution, or vote to which the concurrence of both houses may be necessary, (except on questions of adjournment,) shall be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If then three-fifths of the members elected, agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members elected to that house, it shall become a law, notwithstanding the objections of the governor. In all such cases, the vote of each house shall be determined by yeas and nays, to be entered upon the journal. Any bill which shall not be returned by the governor within five days (Sundays excepted), after it shall have been presented to him, shall become a law, in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return; in which case it shall be filed, with his objections, in the office of the secretary of state within five days after such adjournment, or become a law. The governor may disapprove any item or items of appropriation contained in bills passed by the legislature, and the item or items so disapproved shall be stricken therefrom, unless re-passed in the manner herein prescribed in cases of disapproval of bills.

**SEC. 16. [Vacancy in office of governor.]**—In case of the death, impeachment and notice thereof to the accused, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties, and emoluments of the office for the residue of the term, or until the disability shall be removed, shall devolve upon the lieutenant-governor.

**SEC. 17. [President of senate.]**—The lieutenant-governor shall be president of the senate, and shall vote only when the senate is equally divided.

**SEC. 18. [Office of governor, how filled.]**—If there be no lieutenant-governor, or if the lieutenant-governor, for any of the causes specified in section sixteen of this article, become incapable of performing the duties of the office, the

president of the senate shall act as governor until the vacancy is filled, or the disability removed; and if the president of the senate for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house of representatives.

**SEC. 19. [Board of public lands and buildings.]**—The commissioner of public lands and buildings, the secretary of state, treasurer and attorney-general, shall form a board, which shall have general supervision and control of all the buildings, grounds and lands of the state, the state prison, asylums and all other institutions thereof, except those for educational purposes; and shall perform such duties, and be subject to such rules and regulations, as may be prescribed by law.

**SEC. 20. [Vacancies in office.]**—If the office of auditor of public accounts, treasurer, secretary of state, attorney-general, commissioner of public lands and buildings, or superintendent of public instruction, shall be vacated by death, resignation, or otherwise, it shall be the duty of the governor to fill the same by appointment; and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law.

**SEC. 21. [Accounts of public officers.]**—An account shall be kept by the officers of the executive department, and of all the public institutions of the state, of all moneys received or disbursed by them severally from all sources, and for every service performed, and a semi-annual report thereof be made to the governor, under oath, and any officer who makes a false report shall be guilty of perjury, and punished accordingly.

**SEC. 22. [Reports to governor.]**—The officers of the executive department and of all the public institutions of the state, shall, at least ten days preceding each regular session of the legislature, severally report to the governor, who shall transmit such reports to the legislature, together with the reports of the judges of the supreme court, of defects in the constitution and laws, and the governor, or either house of the legislature, may, at any time, require information in writing, under oath from the officers of the executive department, and all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices.

**SEC. 23. [Seal of state.]**—There shall be a seal of the state, which shall be called the "Great seal of the State of Nebraska," which shall be kept by the secretary of state, and used by him officially, as directed by law.

**SEC. 24. [Salaries.]**—The salaries of the governor, auditor of public accounts, and treasurer, shall be two thousand five hundred dollars each per annum, and of the secretary of state, attorney-general, superintendent of public instruction and commissioner of public lands and buildings, shall be two thousand dollars each per annum. The lieutenant-governor shall receive twice the compensation of a senator, and after the adoption of this constitution they shall not receive to their own use any fees, costs, interest upon public moneys in their hands or under their control, perquisites of office or other compensation, and all fees that may hereafter be payable by law for services performed by an officer, provided for in this article of the constitution, shall be paid in advance into the state treasury. There shall be no allowance for clerk hire in the offices of the superintendent of public instruction and attorney general.

**SEC. 25. [Bonds.]**—The officers mentioned in this article shall give bonds in not less than double the amount of money that may come into their hands, and in no case in less than the sum of fifty thousand dollars, with such provisions as to sureties and the approval thereof, and for the increase of the penalty of such bonds as may be prescribed by law.

**SEC. 25. No other executive state office** shall be continued or created, and the duties now devolving upon officers not provided for by this constitution shall be performed by the officers herein created.

SEC. 19. 6 Neb. 290, 296. 7 Id. 45.

SEC. 23. 7 Neb. 376.

SEC. 24. 4 Neb. 219, 243. 9 Neb. 465.

SEC. 25. 9 Neb. 465. SEC. 26. 4 Neb. 232, 242. 9 Id. 465.



## ARTICLE [VI.]—THE JUDICIAL DEPARTMENT.

**SECTION 1. The judicial power** of this state shall be vested in a supreme court, district courts, county courts, justices of the peace, police magistrates, and in such other courts inferior to the district courts as may be created by law for cities and incorporated towns.

**SEC. 2. The supreme court** shall consist of three judges, a majority of whom shall be necessary to form a quorum, or to pronounce a decision. It shall have original jurisdiction in cases relating to the revenue, civil cases in which the state shall be a party, mandamus, quo warranto, habeas corpus, and such appellate jurisdiction as may be provided by law.

**SEC. 3. [Terms.]**—At least two terms of the supreme court shall be held each year at the seat of government.

**SEC. 4. [Election of judges.]**—The judges of the supreme court shall be elected by the electors of the state at large, and their terms of office, except of those chosen at the first election, as hereinafter provided, shall be six years.

**SEC. 5. [How classified.]**—The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot, so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years.

**SEC. 6. [Chief justice.]**—The judge of the supreme court having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and as such shall preside at all terms of the supreme court; and in case of his absence, the judge having in like manner the next shortest term to serve shall preside in his stead.

**SEC. 7. [Who not eligible.]**—No person shall be eligible to the office of judge of the supreme court unless he shall be at least thirty years of age, and a citizen of the United States; nor unless he shall have resided in this state at least three years next preceding his election.

**SEC. 8. [Reporter.]**—There shall be appointed by the supreme court a reporter, who shall also act as clerk of the supreme court, and librarian of the law and miscellaneous library of the state, whose term of office shall be four years, unless sooner removed by the court, whose salary shall be fixed by law, not to exceed fifteen hundred dollars per annum. The copyright of the state reports shall forever belong to the state.

**SEC. 9. [Jurisdiction of district courts.]**—The district courts shall have both chancery and common law jurisdiction, and such other jurisdiction as the legislature may provide, and the judges thereof may admit persons charged with felony to a plea of guilty, and pass such sentence as may be prescribed by law.

**SEC. 10. [Judicial districts.]**—The state shall be divided into six judicial districts, in each of which shall be elected by the electors thereof, one judge, who shall be judge of the district court therein, and whose term of office shall be four years. Until otherwise provided by law, said districts shall be as follows:

**First District.** The counties of Richardson, Johnson, Pawnee, Gage, Jefferson, Saline, Thayer, Clay, Nuckolls and Fillmore.

**Second District.** The counties of Nemaha, Otoe, Cass and Lancaster.

**Third District.** The counties of Douglas, Sarpy, Washington and Burt.

**Fourth District.** The counties of Saunders, Dodge, Butler, Colfax, Platte, Polk, Merrick, Hamilton, York, Seward, Hall and Howard.

**Fifth District.** The counties of Buffalo, Adams, Webster, Franklin, Harlan, Kearney, Phelps, Gosper, Furnas, Hitchcock, Dundy, Chase, Cheyenne, Keith, Lincoln, Dawson, Sherman, Red Willow, Frontier, and the unorganized territory west of said district.

**Sixth District.** The counties of Cuming, Dakota, Dixon, Cedar, Wayne,

SEC. 2. 4 Neb. 514. 6 Neb. 252.

SEC. 9. 4 Neb. 576, 586. 6 Id. 85.

SEC. 10. Nance county added to sixth district. See sec. 49, chapter 17, post.

Stanton, Madison, Boone, Pierce, Knox, Antelope, Holt, Greeley, Valley, and the unorganized territory west of said district.

**SEC. 11. [Increase of districts.]**—The legislature, whenever two-thirds of the members elected to each house shall concur therein, may, in or after the year one thousand eight hundred and eighty, and not oftener than once in every four years, increase the number of judges of the district courts, and the judicial districts of the state. Such districts shall be formed of compact territory, and bounded by county lines; and such increase, or any change in the boundaries of a district, shall not vacate the office of any judge.

**SEC. 12. The judges** of the district courts may hold courts for each other, and shall do so when required by law.

**SEC. 13. [Salary.]**—The judges of the supreme and district courts shall each receive a salary of twenty-five hundred dollars per annum, payable quarterly.

**SEC. 14. [No other compensation.]**—No judge of the supreme or district courts shall receive any other compensation, perquisite or benefit for or on account of his office in any form whatsoever, nor act as attorney or counselor-at-law, in any manner whatever; nor shall any salary be paid to any county judge.

**SEC. 15. [County judge.]**—There shall be elected in and for each organized county, one judge, who shall be judge of the county court of such county, and whose term of office shall be two years.

**SEC. 16. County courts** shall be courts of record, and shall have original jurisdiction in all matters of probate, settlements of estates of deceased persons, appointment of guardians and settlement of their accounts, in all matters relating to apprentices, and such other jurisdiction as may be given by general law. But they shall not have jurisdiction in criminal cases in which the punishment may exceed six months imprisonment, or a fine of over five hundred dollars; nor in actions in which title to real estate is sought to be recovered, or may be drawn in question; nor in actions on mortgages or contracts for the conveyance of real estate; nor in civil actions where the debt or sum claimed shall exceed one thousand dollars.

**SEC. 17. Appeals to the district courts** from the judgments of county courts shall be allowed in all criminal cases, on application of the defendant; and in all civil cases, on application of either party, and in such other cases as may be provided by law.

**SEC. 18. Justices of the peace** and police magistrates shall be elected in and for such districts, and have and exercise such jurisdiction as may be provided by law; *Provided*, That no justice of the peace shall have jurisdiction of any civil case where the amount in controversy shall exceed two hundred dollars; nor in a criminal case where the punishment may exceed three months imprisonment, or a fine of over one hundred dollars; nor in any matter wherein the title or boundaries of land may be in dispute.

**SEC. 19. [Laws to be uniform.]**—All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law and the force and effect of the proceedings, judgments and decrees of such courts severally shall be uniform.

**SEC. 20. [Terms of office.]**—All officers provided for in this article shall hold their offices until their successors shall be qualified, and they shall respectively reside in the district, county or precinct for which they shall be elected or appointed. The terms of office of all such officers, when not otherwise prescribed in this article, shall be two years. All officers, when not otherwise provided for in this article, shall perform such duties and receive such compensation as may be provided by law.

**SEC. 21. [Vacancies.]**—In case the office of any judge of the supreme court

or of any district court, shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor shall be elected and qualified, and such successor shall be elected for the unexpired term at the first general election that occurs more than thirty days after the vacancy shall have happened. Vacancies in all other elective offices provided for in this article, shall be filled by election, but when the unexpired term does not exceed one year the vacancy may be filled by appointment, in such manner as the legislature may provide.

SEC. 22. **The state may sue** and be sued, and the legislature shall provide by law, in what manner and in what courts suits shall be brought.

SEC. 23. [**Jurisdiction at chambers.**].—The several judges of the courts of record shall have such jurisdiction at chambers as may be provided by law.

SEC. 24. **All process** shall run in the name of "The State of Nebraska," and all prosecutions shall be carried on in the name of "The State of Nebraska."

#### ARTICLE [VII.]—RIGHTS OF SUFFRAGE.

SECTION 1. [**Who are electors.**].—Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state six months, and in the county, precinct or ward, for the term provided by law, shall be an elector. *First*, Citizens of the United States. *Second*, Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States, on the subject of naturalization, at least thirty days prior to an election.

SEC. 2. [**Who not qualified.**].—No person shall be qualified to vote who is *non compos mentis*, or who has been convicted of treason or felony under the law of the state, or of the United States, unless restored to civil rights.

SEC. 3. [**Electors in military service.**].—Every elector in the actual military service of the United States, or of this state, and not in the regular army, may exercise the right of suffrage at such place, and under such regulations as may be provided by law.

SEC. 4. **No soldier, seaman, or marine** in the army and navy of the United States, shall be deemed a resident of the state in consequence of being stationed therein.

SEC. 5. [**Privileged from arrest.**].—Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and going to and returning from the same, and no elector shall be obliged to do military duty on the days of election, except in time of war and public danger.

SEC. 6. **All votes** shall be by ballot.

#### ARTICLE [VIII.]—EDUCATION.

SECTION 1. [**Board of education.**].—The governor, secretary of state, treasurer, attorney-general, and commissioner of public lands and buildings shall, under the direction of the legislature, constitute a board of commissioners for the sale, leasing, and general management of all lands and funds set apart for educational purposes, and for the investment of school funds in such manner as may be prescribed by law.

SEC. 2. [**Property, how used.**].—All lands, money, or other property granted, or bequeathed, or in any manner conveyed to this state for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest, or conveyance.

SEC. 3. [**Permanent school fund.**].—The following are hereby declared

SEC. 22. 7 Neb. 101. 8 Id. 218.

SEC. 23. 7 Neb. 386. 8 Id. 298, 485.

SEC. 24. 1 Neb. 393. 4 Neb. 106. 382.

SEC. 1. By joint resolution an amendment will be voted upon at election to be held Nov. 7, 1882, which strikes out the word "male" from this section.

SEC. 2. 10 Neb. 247.

to be perpetual funds for common school purposes, of which the annual interest or income only can be appropriated, to-wit: *First.* Such per centum as has been, or may hereafter be granted by congress on the sale of lands in this state. *Second.* All moneys arising from the sale or leasing of sections number sixteen and thirty-six in each township in this state, and the lands selected, or that may be selected in lieu thereof. *Third.* The proceeds of all lands that have been, or may hereafter be granted to this state, where, by the terms and conditions of such grant, the same are not to be otherwise appropriated. *Fourth.* The net proceeds of lands and other property and effects that may come to the state, by escheat or forfeiture, or from unclaimed dividends, or distributive shares of the estates of deceased persons. *Fifth.* All moneys, stocks, bonds, lands, and other property, now belonging to the common school fund.

**SEC. 4. [Temporary school fund].**—All other grants, gifts and devises that have been, or may hereafter be made to this state, and not otherwise appropriated by the terms of the grant, gift, or devise, the interest arising from all the funds mentioned in the preceding section, together with all the rents of the unsold school lands, and such other means as the legislature may provide, shall be exclusively applied to the support and maintenance of common schools in each school district in the state.

**SEC. 5. All fines, penalties,** and license moneys arising under the general laws of the state, shall belong and be paid over to the counties, respectively, where the same may be levied or imposed, and all fines, penalties, and license moneys arising under the rules, by-laws, or ordinance of cities, villages, towns, precincts, or other municipal sub-division less than a county, shall belong and be paid over to the same respectively. All such fines, penalties, and license moneys shall be appropriated exclusively to the use and support of common schools in the respective sub-divisions where the same may accrue.

**SEC. 6. [Common schools].**—The legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years.

**SEC. 7. [Distribution of income].**—Provisions shall be made by general law for an equitable distribution of the income of the fund set apart for the support of the common schools, among the several school districts of the state, and no appropriation shall be made from said fund to any district for the year in which school is not maintained at least three months.

**SEC. 8. University, agricultural college,** common school, or other lands, which are now held, or may hereafter be acquired by the state for educational purposes, shall not be sold for less than seven dollars per acre, nor less than the appraised value.

**SEC. 9. [Funds to remain inviolate].**—All funds belonging to the state for educational purposes, the interest and income whereof only are to be used, shall be deemed trust funds held by the state, and the state shall supply all losses thereof that may in any manner accrue, so that the same shall remain forever inviolate and undiminished; and shall not be invested or loaned except on United States or state securities, or registered county bonds of this state; and such funds, with the interest and income thereof, are hereby solemnly pledged for the purposes for which they are granted and set apart, and shall not be transferred to any other fund for other uses.

**SEC. 10. [University].**—The general government of the university of Nebraska shall, under direction of the legislature, be vested in a board of six regents, to be styled the board of regents of the university of Nebraska, who shall be elected by the electors of the state at large, and their term of office, except those chosen at the first election, as hereinafter provided, shall be six years. Their duties and powers shall be prescribed by law; and they shall receive no compensa-

SEC. 4. 5 Neb. 206.

SEC. 5. 6 Neb. 45. 8 Id. 31, 162. 9 Id. 184, 352, 404.

SEC. 7. 5 Neb. 104.

SEC. 10. 5 Neb. 426.

tion, but may be reimbursed their actual expenses incurred in the discharge of their duties.

**SEC. 11. No sectarian instruction** shall be allowed in any school or institution supported in whole or in part by the public funds set apart for educational purposes; nor shall the state accept any grant, conveyance, or bequest of money, lands or other property, to be used for sectarian purposes.

**SEC. 12. [Reform schools].**—The legislature may provide by law for the establishment of a school or schools for the safe keeping, education, employment and reformation of all children under the age of sixteen years, who, for want of proper parental care, or other cause, are growing up in mendicancy or crime.

#### ARTICLE [IX.]—REVENUE AND FINANCE.

**SECTION 1. [Taxes].**—The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property and franchises, the value to be ascertained in such manner as the legislature shall direct, and it shall have power to tax peddlers, auctioneers, brokers, hawkers, commission merchants, showmen, jugglers, inn-keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, venders of patents, in such manner as it shall direct by general law, uniform as to the class upon which it operates.

**SEC. 2. [Exemption from taxation].**—The property of the state, counties and municipal corporations, both real and personal, shall be exempt from taxation, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation, but such exemptions shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property. The legislature may provide that the increased value of lands, by reason of live fences, fruit and forest trees grown and cultivated thereon, shall not be taken into account in the assessment thereof.

**SEC. 3. [Redemption].**—The right of redemption from all sales of real estate, for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate for a period of not less than two years from such sales thereof; *Provided*, That occupants shall in all cases be served with personal notice before the time of redemption expires.

**SEC. 4. [Taxes not to be released].**—The legislature shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever.

**SEC. 5. [County taxes].**—County authorities shall never assess taxes the aggregate of which shall exceed one and a half dollars per one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county.

**SEC. 6. [Municipal taxes].**—The legislature may vest the corporate authorities of cities, towns, and villages, with power to make local improvements by special assessments, or by special taxation of property benefited. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

**SEC. 7. [Property exempt].**—Private property shall not be liable to be

taken or sold for the payment of the corporate debts of municipal corporations. The legislature shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes.

SEC. 8. [**Funding indebtedness.**—The legislature at its first session shall provide by law for the funding of all outstanding warrants and other indebtedness of the state, at a rate of interest not exceeding eight per cent. per annum.

SEC. 9. [**Claims upon treasury.**—The legislature shall provide by law that all claims upon the treasury shall be examined and adjusted by the auditor and approved by the secretary of state before any warrant for the amount allowed shall be drawn; *Provided*, That a party aggrieved by the decision of the auditor and secretary of state may appeal to district court.

#### ARTICLE [X.]—COUNTIES.

SECTION 1. [**Area.**—No new county shall be formed or established by the legislature which will reduce the county or counties, or either of them, to a less area than four hundred square miles, nor shall any county be formed of a less area.

SEC. 2. [**Division.**—No county shall be divided, or have any part stricken therefrom without first submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

SEC. 3. [**Same.**—There shall be no territory stricken from any organized county unless a majority of the voters living in such territory shall petition for such division, and no territory shall be added to any organized county without the consent of the majority of the voters of the county to which it is proposed to be added; but the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for and obliged to pay its proportion of the indebtedness of the counties from which it has been taken.

SEC. 4. [**Election.**—The legislature shall provide by law for the election of such county and township officers as as may be necessary.

SEC. 5. [**Township organization.**—The legislature shall provide by general law for township organization, under which any county may organize whenever a majority of the legal voters of such county, voting at any general election shall so determine: and in any county that shall have adopted a township organization, the question of continuing the same may be submitted to a vote of the electors of such county at a general election in the manner that shall be provided by law.

#### ARTICLE [XI.]—CORPORATIONS.

##### RAILROAD CORPORATIONS.

SECTION 1. [**Public office.**—Every railroad corporation organized or doing business in this state, under the laws or authority thereof, or of any other state or of the United States, shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom, the names of the owners of its stock, and the amounts owned by them respectively, the amount of stock paid in and by whom, the transfers of said stock, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad corporation, or other parties having control of its road, shall annually make a report, under oath, to the auditor of public accounts, or some officer to be designated by law, of the amount received from passengers and freight, and such other matters relating to railroads as may be prescribed by law. And the legislature shall pass laws enforcing by suitable penalties the provisions of this section.

SEC. 2. [**Property liable to sale on execution.**—The rolling stock

and all other movable property belonging to any railroad company or corporation in this state shall be liable to execution and sale in the same manner as the personal property of individuals, and the legislature shall pass no law exempting any such property from execution and sale.

**SEC. 3. [Consolidation of stock.]**—No railroad corporation or telegraph company shall consolidate its stock, property, franchises, or earnings, in whole or in part, with any other railroad corporation or telegraph company owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice of at least sixty days to all stockholders in such manner as may be provided by law.

**SEC. 4. [Rates of charges.]**—Railways heretofore constructed, or that may hereafter be constructed in this state, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the legislature may from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this state. The liability of railroad corporations as common carriers shall never be limited.

**SEC. 5. [Increase of stock and bonds.]**—No railroad corporation shall issue any stock or bonds, except for money, labor, or property actually received and applied to the purposes for which such corporation was created, and all stock, dividends, and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. The capital stock of railroad corporations shall not be increased for any purpose, except after public notice for sixty days, in such manner as may be provided by law.

**SEC. 6. [Eminent domain.]**—The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking, by the legislature, of the property and franchises of incorporated companies already organized or hereafter to be organized, and subjecting them to the public necessity, the same as of individuals.

**SEC. 7. [Abuses to be regulated by law.]**—The legislature shall pass laws to correct abuses, and prevent unjust discrimination and extortion in all charges of express, telegraph, and railroad companies in this state, and enforce such laws by adequate penalties to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

**SEC. 8. [Railroads organized in other states.]**—No railroad corporation, organized under the laws of any other state, or of the United States, and doing business in this state, shall be entitled to exercise the right of eminent domain, or have power to acquire the right of way, or real estate for depot or other uses, until it shall have become a body corporate pursuant to and in accordance with the laws of this state.

#### MUNICIPAL CORPORATIONS.

**SECTION 1. [Subscriptions.]**—No city, county, town, precinct, municipality, or other sub-division of the state, shall ever become a subscriber to the capital stock, or owner of such stock, or any portion or interest therein, of any railroad or private corporation, or association.

#### MISCELLANEOUS CORPORATIONS.

**SECTION 1. [Incorporations to be by general law.]**—No corporation shall be created by special law, nor its charter extended, changed, or amended, except those for charitable, educational, penal, or reformatory purposes, which are to be and remain under the patronage and control of the state, but the legislature shall provide by general laws for the organization of all corporations hereafter to be created. All general laws passed pursuant to this section may be altered from time to time, or repealed.

**SEC. 2. [Street railroads.]**—No such general law shall be passed by the

legislature granting the right to construct and operate a street railroad within any city, town, or incorporated village, without first requiring the consent of a majority of the electors thereof.

**SEC. 8. [Suits].**—All corporations may sue and be sued in like cases as natural persons.

**SEC. 4. [Liabilities of subscribers to stock].**—In all cases of claims against corporations and joint stock associations, the exact amount justly due shall be first ascertained, and after the corporate property shall have been exhausted, the original subscribers thereof shall be individually liable to the extent of their unpaid subscription, and the liability for the unpaid subscription shall follow the stock.

**SEC. 5. [Elections].**—The legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall [have] the right to vote in person or proxy for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them upon the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

**SEC. 6. All existing charters** or grants of special or exclusive privileges under which organization shall not have taken place, or which shall not be in operation within sixty days from the time this constitution takes effect, shall thereafter have no validity or effect whatever.

**SEC. 7. [Stockholders in banks].**—Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him held, to an amount equal to his respective stock or shares so held, for all its liabilities accruing while he remains such stockholder; and all banking corporations shall publish quarterly statements, under oath, of their assets and liabilities.

#### ARTICLE [XII.]—STATE, COUNTY AND MUNICIPAL INDEBTEDNESS.

**SECTION 1. [Debts].**—The state may, to meet casual deficits or failures in the revenues, contract debts never to exceed in the aggregate one hundred thousand dollars; and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war; and provision shall be made for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrevocable until such debt be paid.

**SEC. 2. [Donations].**—No city, county, town, precinct, municipality, or other subdivision of the state, shall ever make donations to any railroad or other works of internal improvement, unless a proposition so to do shall have been first submitted to the qualified electors thereof at an election by authority of law: *Provided*, That such donations of a county with the donations of such subdivisions in the aggregate shall not exceed ten per cent. of the assessed valuation of such county; *Provided further*, That any city or county may, by a two-thirds vote, increase such indebtedness five per cent., in addition to such ten per cent., and no bonds or evidences of indebtedness so issued shall be valid unless the same shall have endorsed thereon a certificate signed by the secretary and auditor of state, showing that the same is issued pursuant to law.

**SEC. 3. The credit** of the state shall never be given or loaned in aid of any individual, association or corporation.

#### ARTICLE [XIII.]—MILITIA.

**SECTION 1.** The legislature shall determine what persons shall constitute the militia of the state, and may provide for organizing and disciplining the same.



## ARTICLE [XIV.]-MISCELLANEOUS PROVISIONS.

**SECTION 1. [Oath of officers.]**—Executive and judicial officers and members of the legislature, before they enter upon their official duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of Nebraska, and will faithfully discharge the duties of \_\_\_\_\_ according to the best of my ability, and that at the election at which I was chosen to fill said office I have not improperly influenced in any way the vote of any elector, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, or any promise of office for any official act or influence (for any vote I may give or withhold on any bill, resolution or appropriation)." Any such officer or member of the legislature who shall refuse to take the oath herein prescribed, shall forfeit his office, and any person who shall be convicted of having sworn falsely to, or of violating his said oath, shall forfeit his office, and thereafter be disqualified from holding any office of profit or trust in this state, unless he shall have been restored to civil rights.

**SEC. 2. [Who ineligible to office.]**—Any person who is in default as collector and custodian of public money or property, shall not be eligible to any office of trust or profit under the constitution or laws of this state; nor shall any person convicted of felony be eligible to office unless he shall have been restored to civil rights.

**SEC. 3. Drunkenness** shall be cause of impeachment and removal from office.

## ARTICLE [XV.]-AMENDMENTS.

**SECTION 1. [How made.]**—Either branch of the legislature may propose amendments to this constitution, and if the same be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and published once each week in at least one newspaper in each county, where a newspaper is published, for three months immediately preceding the next election of senators and representatives, at which election the same shall be submitted to the electors for approval or rejection, and if a majority of the electors voting at such election adopt such amendments, the same shall become a part of this constitution. When more than one amendment is submitted at the same election, they shall be so submitted as to enable the electors to vote on each amendment separately.

**SEC. 2. [Convention to revise.]**—When three-fifths of the members elected to each branch of the legislature deem it necessary to call a convention to revise, amend, or change this constitution, they shall recommend to the electors to vote at the next election of members of the legislature for or against a convention; and if a majority voting at said election vote for a convention, the legislature shall, at its next session, provide by law for calling the same. The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election, for the purpose aforesaid. No amendment or change of this constitution, agreed upon by such convention, shall take effect until the same has been submitted to the electors of the state, and adopted by a majority of those voting for and against the same.

## ARTICLE [XVI.]-SCHEDULE.

**SECTION 1. [Rights preserved.]**—That no inconvenience may arise from the revisions and changes made in the constitution of this state, and to carry the same into effect, it is hereby ordained and declared that all laws in force at the time of the adoption of this constitution, not inconsistent therewith, and all rights,

ART. [XIV.] SEC. 1. See Chapter 3, post.  
ART. [XVI.] SEC. 1. 4 Neb. 539. 6 Id. 302.

actions, prosecutions, claims, and contracts of this state, individuals, or bodies corporate, shall continue to be as valid as if this constitution had not been adopted.

**SEC. 2. All fines, taxes, penalties and forfeitures** owing to the state of Nebraska, or to the people thereof, under the present constitution and laws, shall inure to the use of the people of the state of Nebraska under this constitution.

**SEC. 3. Recognizances, bonds, obligations, and all other instruments** entered into or executed upon the adoption of this constitution, to the people of the state of Nebraska, to the state of Nebraska, to any state or county officer, or public body, shall remain binding and valid, and rights and liabilities upon the same shall continue, and all crimes and misdemeanors shall be tried and punished as though no change had been made in the constitution of this state.

**SEC. 4. [Jurisdiction of courts.]**—All existing courts which are not in this constitution specifically enumerated, and concerning which no other provision is herein made, shall continue in existence, and exercise their present jurisdiction until otherwise provided by law.

**SEC. 5. [Persons to continue in office.]**—All persons now filling any office or appointment, shall continue in the exercise of the duties thereof, according to their respective commissions, elections, or appointments, unless by this constitution it is otherwise directed.

**SEC. 6. The district attorneys** now in office shall continue during their unexpired terms to hold and exercise the duties of their respective offices in the judicial districts herein created, in which they severally reside. In each of the remaining districts one such officer shall be elected at the first general election, and hold his office until the expiration of the terms of those now in office.

**SEC. 7. This constitution** shall be submitted to the people of the state of Nebraska, for adoption or rejection, at an election to be held on the second Tuesday of October, A. D. 1875, and there shall be separately submitted at the same time, for adoption or rejection, the independent article relating to "Seat of government," and the independent article "Allowing electors to express their preference for United States senator."

**SEC. 8. [Election.]**—At said election the qualified voters shall vote at the usual places of voting, and the said election shall be conducted and the returns thereof made according to the laws now in force regulating general elections, except as herein otherwise provided.

**SEC. 9. The secretary of state** shall, at least twenty days before said election, cause to be delivered to the county clerk of each county, blank poll-books, tally lists, and forms of return, and twice as many of properly prepared printed ballots for the said election as there are voters in such county, the expense whereof shall be audited and paid as other public printing ordered by the secretary is by law required to be audited and paid; and the several county clerks shall, at least five days before said election, cause to be distributed to the judges of election, in each election precinct in their respective counties, said blank poll-books, tally lists, forms of return, and tickets.

**SEC. 10. [Forms of ballot.]**—At the said election the ballots shall be of the following form:

For the new constitution.

Against the new constitution.

For the article relating to "Seat of government."

Against the article relating to "Seat of government."

For the article "Allowing electors to express their preference for United States senator."

Against the article "Allowing electors to express their preference for United States senator."

**SEC. 11. [Returns of election.]**—The returns of the whole vote cast, and of the votes for the adoption or rejection of this constitution, and for or against the articles respectively submitted shall be made by the several county clerks to the

secretary of state, within fourteen days after the election, and the returns of the said vote, shall, within three days thereafter, be examined and canvassed by the president of this convention, the secretary of state, and the governor, or any two of them, and proclamation shall be made forthwith by the governor, or the president of this convention, of the result of the canvass.

**SEC. 12. [Result of canvass.]**—If it shall appear that a majority of the votes polled are "for the new constitution," then so much of this new constitution as was not separately submitted to be voted on by articles shall be the supreme law of the state of Nebraska, on and after the first day of November, A. D. 1875. But if it shall appear that a majority of the votes polled were "against the new constitution," the whole thereof, including the articles separately submitted, shall be null and void. If the votes "for the new constitution" shall adopt the same, and it shall appear that a majority of the votes polled are for the article relating to "the seat of government," said article shall be a part of the constitution of this state. If the votes "for the new constitution" shall adopt the same and it shall appear that a majority of the votes polled are for the article "allowing electors to express their preference for United States senator," said article shall be a part of the constitution of this state.

**SEC. 13. [General election, when held.]**—The general election of this state shall be held on the Tuesday succeeding the first Monday of November of each year, except the first general election, which shall be on the second Tuesday in October, 1875. All state, district, county, precinct, and township officers, by the constitution or laws made elective by the people, except school district officers, and municipal officers in cities, villages, and towns, shall be elected at a general election to be held as aforesaid. Judges of the supreme, district, and county courts, all elective county and precinct officers, and all other elective officers, the time for the election of whom is not herein otherwise provided for, and which are not included in the above exception, shall be elected at the first general election, and thereafter at the general election next preceding the time of the termination of their respective terms of office; *Provided*, That the office of no county commissioner shall be vacated hereby.

**SEC. 14. The terms of office** of all state and county officers, of judges of the supreme, district, and county courts, and regents of the university shall begin on the first Thursday after the first Tuesday in January next succeeding their election. The present state and county officers, members of the legislature, and regents of the university, shall continue in office until their successors shall be elected and qualified.

**SEC. 15. The supreme, district and county courts**, established by this constitution shall be the successors respectively of the supreme court, the district courts, and the probate courts, having jurisdiction under the existing constitution.

**SEC. 16. The supreme, district and probate courts** now in existence shall continue, and the judges thereof shall exercise the power and retain their present jurisdiction until the courts provided for by this constitution shall be organized.

**SEC. 17. All cases, matters and proceedings**, pending undetermined in the several courts, and all records, judgments, orders, and decrees remaining therein, are hereby transferred to and shall be proceeded and enforced in and by the successors thereof respectively.

**SEC. 18. [Existing constitution.]**—If this constitution be adopted, the existing constitution shall cease in all its provisions on the first day of November, A. D. 1875.

**SEC. 19. The provisions** of this constitution required to be executed prior to the adoption or rejection thereof, shall take effect and be in force immediately.

**SEC. 20. The legislature** shall pass all laws necessary to carry into effect the provisions of this constitution.

**SEC. 21. [Officers to take oath.]**—On the taking effect of this constitution, all state officers hereby continued in office shall, before proceeding in the further discharge of their duties, take an oath or affirmation to support this constitution.

**SEC. 22. The regents of the university** shall be elected at the first general election under this constitution, and be classified by lot so that two shall hold their offices for the term of two years, two for the term of four years, and two for the term of six years.

**SEC. 23. The present executive state officers** shall continue in office until the executive state officers provided for in the constitution shall be elected and qualified.

**SEC. 24. The returns of the whole vote** cast for the judges of the supreme and district courts, district attorneys, and regents of the university, under the first general election, shall be made by the several county clerks to the secretary of state within fourteen days after the election; and the returns of the said votes shall within three days thereafter, be examined and canvassed by the governor, secretary of state, and the president of this convention, or any two of them, and certificates of the election shall forthwith be issued by the secretary of state to the persons found to be elected.

**SEC. 25. [Salaries to be paid.]**—The auditor shall draw the warrants of the state quarterly for the payment of the salaries of all officers under this constitution, whose compensation is not otherwise provided for, which shall be paid out of any funds not otherwise appropriated.

**SEC. 26. [Terms of court.]**—Until otherwise provided by law, the judges of the district courts shall fix the time of holding courts in their respective districts.

**SEC. 27. The members of the first legislature** under this constitution shall be elected in the year 1876.

**SEC. 28. [Enrollment of constitution.]**—This constitution shall be enrolled and deposited in the office of the secretary of state, and printed copies thereof shall be prefixed to the books containing the laws of this state, and all future editions thereof.

## PROPOSITIONS SEPARATELY SUBMITTED.\*

### ALLOWING ELECTORS TO EXPRESS THEIR PREFERENCE FOR UNITED STATES SENATOR.

The legislature may provide that at the general election immediately preceding the expiration of the term of a United States senator from this state, the electors may, by ballot, express their preference for some person for the office of United States senator. The votes cast for such candidates shall be canvassed and returned in the same manner as for state officers.

### SEAT OF GOVERNMENT.

The seat of government of the state shall not be removed or re-located without the assent of a majority of the electors of the state, voting thereupon at a general election or elections, under such rules and regulations as to the number of elections and manner of voting, and places to be voted for, as may be prescribed

SEC. 23. 4 Neb. 219. 9 Id. 467.

SEC. 25. 4 Neb. 216. 6 Id. 18.

SEC. 26. 8 Neb. 483. 9 Id. 162.

\*NOTE.—Both propositions were adopted.

by law; *Provided*, The question of removal may be submitted at such other general elections as may be provided by law.

Done in convention at the capitol, in the city of Lincoln, on the twelfth day of June, in the year of our Lord, one thousand eight hundred and seventy-five, and of the independence of the United States of America, the ninety-ninth.

In witness whereof we have hereunto subscribed our names.

JOHN LEE WEBSTER, PRESIDENT.

O. A. ABBOTT,  
LUKE AGUR,  
J. P. BECKER,  
J. E. BOYD,  
CLINTON BRIGGS,  
JEFFERSON H. BROADY,  
CHARLES H. BROWN,  
S. F. BURTON,  
S. H. CALHOUN,  
E. C. CARNS,  
T. S. CLARK,  
S. H. COATES,  
A. H. CONNER,  
W. B. CUMMINS,  
JAMES W. DAWES,  
J. E. DOOM,  
W. L. DUNLAP,  
R. C. ELDRIDGE,  
J. G. EWAN,  
S. R. FOSS,  
C. H. FRADY,  
JOSEPH GARBER,  
C. H. GERE,  
HENRY GREBE,  
EDWIN N. GRENELL,  
GEORGE L. GRIFFING,  
WILLIAM A. GWYER,  
ANDREW HALLNER,  
J. D. HAMILTON,  
JAMES HARPER,  
ROBT. B. HARRINGTON,  
J. B. HAWLEY,  
M. L. HAYWARD,  
D. P. HENRY,

B. I. HINMAN,  
M. R. HOPEWELL,  
C. E. HUNTER,  
A. G. KENDALL,  
S. M. KIRKPATRICK,  
JAMES LAIRD,  
CHAS. F. MANDERSON,  
FRANK MARTIN,  
A. W. MATTHEWS,  
SAMUEL MAXWELL,  
JOHN McPHERSON,  
W. H. MUNGER,  
J. H. PEERY,  
C. W. PIERCE,  
S. B. POUND,  
ISAAC POWERS, JR.,  
M. B. REES,  
W. M. ROBERTSON,  
JOSIAH ROGERS,  
J. H. SAULS,  
H. H. SHEDD,  
GEO. S. SMITH,  
W. H. STERNS,  
R. F. STEVENSON,  
JOHN J. THOMPSON,  
L. B. THORNE,  
JACOB VALLERY, SR.,  
C. H. VAN WYCK,  
CHARLES F. WALTHERS,  
A. M. WALLING,  
T. L. WARRINGTON,  
A. J. WEAVER,  
M. W. WILCOX,  
J. F. ZEDIKER.

ATTEST:

GUY A. BROWN, Secretary.

C. L. MATHER, Assistant Secretary.

NOTE.—This constitution has been compared with enrolled copy. The original articles are not numbered, and the numbering of the articles as given here in [ ] is the same as appears in the various session laws published under the direction of the secretary of state, prior to 1881, and as cited by the supreme court in various decisions.



# THE GENERAL STATUTES OF THE STATE OF NEBRASKA.

## PART I.

### CHAPTER 1.—ADMISSION OF THE STATE.

*Whereas*, The congress of the United States did, on the ninth day of February, A. D. 1867, pass an act, in the following words, to wit:

"An act for the admission of the state of Nebraska into the Union.

*Whereas*, On the twenty-first day of March, A. D. 1864, congress passed an act to enable the people of Nebraska to form a constitution and state government, and offered to admit said state, when so formed, into the Union, upon compliance with certain conditions therein specified; and, *whereas*, it appears that the said people have adopted a constitution, which upon due examination, is found to conform to the provisions, and comply with the conditions of said act, and to be republican in its form of government, and that they now ask for admission into the Union: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled*, That the constitution and state government which the people of Nebraska have formed for themselves be, and the same is hereby, accepted, ratified and confirmed, and that the said state of Nebraska shall be, and is hereby, declared to be one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original states, in all respects whatsoever.

SEC. 2. *And be it further enacted*, That the said state of Nebraska, shall be, and is hereby, declared to be entitled to all the rights, privileges, grants and immunities, and to be subject to all the conditions and restrictions of an act entitled "An act to enable the people of Nebraska to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states." Approved, April 19th, 1864.

SEC. 3. *And be it further enacted*, That this act shall not take effect except upon the fundamental condition, that within the state of Nebraska, there shall be no denial of the elective franchise, or of any other right, to any person, by reason of race or color, excepting Indians not taxed; and upon the further fundamental condition, that the legislature of said state, by a solemn public act, shall declare the assent of said state to the said fundamental condition, and shall transmit to the president of the United States, an authentic copy of said act; upon receipt whereof the president, by proclamation, shall forthwith announce the fact, whereupon, said fundamental condition shall be held as a part of the organic law of the state, and thereupon, and without any further proceedings on the part of congress,

NOTE.—Being "An Act declaring the assent of the state of Nebraska to an act of the congress of the United States, entitled, "An Act for the admission of Nebraska into the Union," passed February 9, A. D. 1867." Laws 1867, 28. G. S. 71. The fundamental conditions imposed by congress and assented to by this act are a part of the constitution, and binding as such, although not submitted to a vote of the people. 2 Neb. 198. Since the admission of the state into the Union, the federal courts have no jurisdiction of the crime of larceny committed on an Indian reservation. 4 Neb. 128.

the admission of said state into the Union shall be considered as complete. Said state legislature shall be convened by the territorial governor, within thirty days after the passage of this act, to act upon the conditions submitted herein.

SCHUYLER COLFAX,  
*Speaker of the House of Representatives.*

LAFAYETTE S. FOSTER,  
*President of the Senate, pro tem.*

In the senate of the United States, February 8, 1867. The president of the United States having returned to the senate, in which it originated, the bill entitled "An act for the admission of the state of Nebraska into the Union," with his objections thereto, the senate proceeded in pursuance of the constitution to reconsider the same; and

*Resolved*, That the said bill do pass, two-thirds of the senate agreeing to pass the same.

Attest:

J. W. FORNEY,  
*Secretary of the Senate.*  
By W. J. McDONALD,  
*Chief Clerk.*

In the house of representatives of the United States, February 9, 1867.

The house of representatives having proceeded, in pursuance of the constitution, to reconsider the bill entitled "An act for the admission of the state of Nebraska into the Union," returned to the senate by the president of the United States, with his objections, and sent by the senate to the house of representatives with the message of the president returning the bill:

*Resolved*, That the bill do pass, two-thirds of the house of representatives agreeing to pass the same.

Attest:

EDWARD W. McPHERSON,  
*Clerk.*

DEPARTMENT OF STATE, }  
WASHINGTON, Feb. 12, 1867. }

A true copy.

R. S. CHEW,  
*Chief Clerk.*

*And Whereas*, The governor of the territory of Nebraska, did on the 14th day of February, A. D. 1867, make and issue the following proclamation, to-wit: Whereas, the congress of the United States has passed an act admitting, conditionally, Nebraska into the Union, as one of the independent states of the same, and, whereas, said condition is in the words following:

*And be it further enacted*, That this act shall not take effect except upon the fundamental condition, that within said state of Nebraska, there shall be no abridgment or denial of the exercise of the elective franchise, or of any other right to any person by reason of race or color, excepting Indians not taxed; and upon the further fundamental condition, that the legislature of said state, by a solemn public act, shall declare the assent of said state to said fundamental condition, and shall transmit to the president of the United States an authentic copy of said act upon receipt whereof, the president, by proclamation, shall forthwith announce the fact, whereupon said fundamental condition shall be held as a part of the organic law of said state, and thereupon, and without any further proceedings on the part of congress, the admission of said state into the Union shall be considered as complete.

Now, therefore, I, Alvin Saunders, governor of the territory of Nebraska, do call upon the members of the state legislature of Nebraska, to meet at the capitol, in the city of Omaha, on Wednesday, the twentieth day of February, inst., at



the hour of two o'clock P. M., for the purpose of taking action upon the conditions as proposed by congress.

In testimony whereof, I have hereunto set my hand and have caused to be affixed the great seal of the territory of Nebraska.

Done at Omaha, this fourteenth day of February, A. D. 1867.

[L. S.]

By the Governor:

ALVIN SAUNDERS.

ALGERNON S. FADDOCK, Secretary.

*And Whereas*, The legislature of the state of Nebraska, in accordance with the above recited proclamation, has convened for the purpose of considering the conditions as set forth in the said act of congress, and in the proclamation of the governor as aforesaid: *And Whereas*, after due deliberation, the legislature of the state of Nebraska do not regard the above recited act of the United States, or the conditions therein contained, to be a violation of any right of the state of Nebraska, or of the people thereof, or as abridging, or in any manner infringing on any of the privileges enjoyed by the citizens of Nebraska while in a territorial state; therefore,

**SECTION 1.** *Be it further enacted by the Legislature of the State of Nebraska*, That the act of the congress of the United States, entitled, "An act for the admission of the state of Nebraska into the Union," passed, February 9, 1867, be, and the same is hereby ratified, adopted and accepted; and it is hereby declared, that the provisions of the third section of the said act of congress shall be a part of the organic law of the state of Nebraska.

## CHAPTER 2.—AGRICULTURE.

### ARTICLE I.\*—AGRICULTURAL AND HORTICULTURAL SOCIETIES.

**SECTION 1. [Annual meeting of state board.]**—There shall be held at the capital of the state, on the third Tuesday in January of each year, a meeting of the state board of agriculture, together with the president of each county society, or delegate therefrom duly authorized, who shall for the time being be *ex-officio* members of the state board of agriculture, for the purpose of deliberating and consulting as to the wants, prospects and condition of the agricultural interests throughout the state. And at such annual meeting the several reports from the subordinate societies shall be delivered to the president of the state board; and the said president and delegates shall at this meeting elect suitable persons to fill all vacancies in the state board. The said president shall also have power to call meetings of the board whenever he may deem it expedient. [1879 § 1, 396.]

**SEC. 2. [Officers.]**—The officers of the board shall consist of a president, vice-president, secretary, and treasurer, and such others as the board may deem necessary. They shall be elected at the annual meeting of the board, and shall hold their offices for the period of one year, and until their successors are elected and qualified. The board shall determine by lot the time that each member shall serve, so that the term of service of one-half of the members shall expire annually on the day of the annual meeting. [Id. § 2.]

**SEC. 3. [Annual report—Appropriation.]**—It shall be the duty of the said board to make an annual report to the governor, embracing the proceedings of the society, with a bill of items showing what moneys have been received and paid out for the past year, giving a general view of the condition of agriculture throughout the state, and such other recommendations as they may deem important and useful. The sum of two thousand (2,000) dollars shall be paid annually

\*NOTE.—This article embraces 1. "An act for the government, support and maintenance of the state board of agriculture and state horticultural society." Laws 1879, 396. This act repeals sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, Chap. 1. B. S. 1866, and all acts supplemental to and amendatory of said sections [G. S. 76-78, 1869, 65. 1875, 65]. 2. Sec. 5 of "An act to encourage, develop and promulgate the agricultural and horticultural resources of the state." Laws 1872, 11. G. S. 78, 79. See note to Sec. 11 this article. 3. "Section, 1, Chap. 1. B. S. 1866 as amended 1881. See note to Sec. 12, this article.

NOTE.—Also, that Sections 34, 35, 36, Chap. 1. B. S. 1866 are repealed. [See sections 79 and 570, Part III this volume]. That Sections 37, 38, and 39, Chap. 1. R. S. 1863, are repealed. [G. S. 83, note 2]. That "An act for the payment of a bounty on gopher scalps," [Laws 1871, 126.] is repealed by an act approved Jan. 30, 1873 [See G. S. 83. Note.] That "An act to provide an additional bounty on wolves and wild cats in certain counties," [Laws 12 Sess. Terr. p. 51.] is repealed. [See G. S. 82, Note 2.]

out of the state treasury which shall be used in the payment of premiums awarded by said board in the various branches of agriculture; and the state auditor is hereby authorized to draw his warrant for said amount upon the receipt of the proper vouchers therefor, certified to by the president and secretary of said board: *Provided*, That should the board fail in any year to offer and award premiums as aforesaid, then the benefit of this section shall not be available that year. [Id. § 3.]

**SEC. 4. [Printing reports.]**—The reports of the board, or so much thereof as will not exceed 200 pages of printed matter, to be designated by the president and secretary, shall be printed annually by the state printer, and 2,000 copies thereof bound in paper covers, and delivered to the secretary of state, the accounts therefor to be audited as other accounts for state printing are audited, and paid out of any money appropriated for legislative printing. [Id. § 4.]

**SEC. 5. [Distribution of reports.]**—The secretary of state shall distribute said reports as follows: Five copies thereof to each member of the legislature, and to each state officer; one copy by mail to each county clerk, to be by them preserved as one of the public records of the county, one copy by mail to each state and territorial library, the library of congress, the senate library, the library of the house of representatives, and the library of the agricultural department of the United States; one copy to each public library in the state; one hundred copies to the state library; and the balance to the secretary of the state board of agriculture, to be by him distributed as the board may direct. [Id. § 5.]

#### STATE HORTICULTURAL SOCIETY.

**SEC. 6. [Annual meeting.]**—The state horticultural society shall meet at the capital of the state on the third Wednesday in January of each year, for the purpose of deliberating and consulting as to the wants, conditions and prospects of the horticultural interests of the state. [Id. § 6.]

**SEC. 7. [Officers.]**—The officers of the state horticultural society shall correspond in numbers and titles to those of the state board of agriculture, and shall be elected at said annual meeting for like periods of time. [Id. § 7.]

**SEC. 8. [Object.]**—Such society shall encourage the organization of district and county societies and give them representation therein, and in every proper way further the fruit and tree growing interests of the state. [Id. § 8.]

**SEC. 9. [Annual report.]**—The secretary of said society shall make an annual report to the governor, embracing the proceedings of the society, with a bill of items showing for what purposes any money appropriated was paid out for the past year, the general condition of horticultural interests throughout the state, together with the essays, statements of facts, and recommendations as he may deem useful, which report, not exceeding one hundred and fifty pages of printed matter, shall be printed and bound up with the report of the state board of agriculture, paid for and distributed therewith as provided in sections four and five of this chapter. [Id. § 9.]

**SEC. 10. [Appropriation.]**—The sum of one thousand dollars shall be paid out of the state treasury annually for the use and benefit of said society, and the state auditor is hereby authorized to draw his warrant for the same upon vouchers therefor, certified to by the president and secretary of said society, in such sums and at such times as may be for the interests of said society, said amount to be used in the payment of premiums awarded by such board in the various branches of horticulture. [Id. § 10.]

**SEC. 11. [Penalty.]**—If any of the officers named and designated as the custodians of the appropriation hereby made, shall convert the same to his own

**SEC. 11.** This section constituting the last of an act passed Jan. 13, 1872, and incorporated in Gen. Stat. 79 has never been repealed. The first four sections of the act, being sections 12, 13, 14 and 15, G. S. chap. 2, were repealed 1875, p. 65. These sections provided for an appropriation of \$3,000 annually to the state board of agriculture, and \$2,000 to the state horticultural society, required an itemized statement of expenses to be made and published and reported to the legislature, and bonds to be given by the officers of each society, followed by the fifth section as above stated.

use, or suffer the same to be lost or expended in any other way or manner than that designated by law, such officers or persons shall be deemed guilty of embezzlement, and after conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year. [1872, § 5, 12. G. S. § 16, 79.]

#### COUNTY AGRICULTURAL SOCIETIES.

**SEC. 12. [County aid.]**—Whenever twenty or more persons residents of any county in this state shall organize themselves into a society for the improvement of agriculture within said county, and shall have adopted a constitution and by-laws agreeable to the rules and regulations furnished by the state board of agriculture, and shall have appointed the usual and proper officers, and when the said society shall have raised and paid into the treasury, by voluntary subscription or by fees imposed upon its members, any sum of money, in each year not less than fifty dollars, and whenever the president of such society shall certify to the county clerk the amount thus paid, it shall be the duty of the county clerk to draw a warrant in favor of the said president for a sum equal to three cents on each inhabitant of said county upon a basis of the last vote for member of congress, allowing five inhabitants for each vote thus cast, and it shall be the duty of the treasurer of the county to pay the same: *Provided*, That if any existing county agricultural society fails or has failed for two or more years, to hold an annual fair of at least three days duration, then any agricultural society in the county formed for a similar purpose, and governed by the rules of this chapter and who shall hold an annual fair of not less than three days duration, may apply for and shall receive from the county treasurer the amount above provided to be paid, to which amount they shall be entitled for so long a period as they may comply with the conditions of this act. [R. S. 3. 1869, 217. G. S. 65, as amended Mar. 3. Took effect June 1, 1881.]

**SEC. 13. [Premiums awarded.]**—All county agricultural societies organized pursuant to law, shall annually offer and award premiums for the improvement of soil, crops, tillage, manures, implements, stock, articles of domestic industry, and such other articles, productions, and improvements as they may deem proper, and perform all such acts as they may deem best calculated to promote the agricultural and manufacturing interests of the county and state. And it shall also be their duty so to regulate the amount of premiums and the different grades of the same, as to enable farmers of small as well as large means to compete therefor; and in making the awards special reference shall be had to the profits which may accrue or be likely to accrue from improved methods of raising crops, or of the fabrication of the articles thus offered, with the intention that the premiums shall be given for the most economical mode of improvement. All persons offering to compete for premiums on improved mode of tillage, or the production of any crops or other articles, shall be required, before such premiums are adjudged, to deliver to the awarding committee a full and correct statement of the process of such mode of tillage or production, and the expense and value of the same, with a view of showing accurately the profits derived or expected to be derived therefrom. [1879, § 11, 399.]

**SEC. 14. [List of awards—Report to state board.]**—It shall be the duty of each county society to publish annually a list of the awards, and an abstract of the treasurer's account, in such manner as the society may direct, and to make a report of their proceedings during the year, and a synopsis of the awards for the improvements in agriculture and manufactures, together with an abstract of the several descriptions of these improvements; and also to make a report of the condition of agriculture in that county; which report shall be made out in accordance with the rules and regulations of the state board of agriculture, and shall be forwarded to the state board at their annual meeting. [Id. § 12.]

**SEC. 12.** See note at beginning of article. Upon an application for a mandamus to compel payment by the county under this section it should appear that there are funds in the treasury from which payment can be made. 10 Feb. 19.

**Sec. 15. [Fair grounds.]**—Each county society may purchase and hold in fee simple such real estate as they may deem necessary, not exceeding 160 acres of land, for the purpose of holding county fairs. [Id. § 13.]

**Sec. 16. [County aid.]**—Whenever any county agricultural society, organized by law, shall have procured in fee simple, free from encumbrance, land for fair grounds not less than ten acres in extent, the county board of said county may, in their discretion, if the finances of the county will admit, appropriate and pay to such society a sum not exceeding one hundred dollars for every thousand inhabitants in said county, to be expended by such society in fitting up such fair grounds, but for no other purpose; but not more than one thousand dollars shall in the aggregate be appropriated in any one county. [Id. § 14.]

**Sec. 17. [Report to county board—Dissolution of the society.]**—Each society receiving such appropriation shall, through its secretary, make to the county board a detailed statement, with vouchers showing the legal disbursement of all the moneys received. And in all cases, when such county agricultural societies shall be dissolved, or neglect, for the space of two years, to discharge the duties devolving upon them by law, or cease to exist, in any county where payments have been made for real estate, or improvements upon such real estate for the use of any agricultural society, then all such real estate and improvements shall vest in fee simple in the county making such payment, and the district court of said county, upon proof thereof, shall, upon petition of said county board, make a proper decree vesting the title to such property in said county. [Id. § 15.]

#### FAIRS.

**Sec. 18. [No liquor selling, games of chance or horse-racing.]**—No person shall be permitted to sell intoxicating liquors, wine or beer, of any kind, or be engaged in any gambling, or other game of chance or horse-racing, either inside the enclosure where any state, district or county agricultural society fair is being held, or within forty rods thereof, during the time of holding such fair; and any person found guilty of any of the offenses herein enumerated, shall be fined in a sum not less than five nor more than fifty dollars for every such offense: *Provided*, That trials of speed of horses under direction of the society shall not be included in the term horse-racing: *Provided, also*, That upon filing proof with the state treasurer of a violation of this section inside the enclosure of any such fair, the amount of money appropriated shall be withheld for the current year, except, if paid, then it shall be withheld from any money appropriated for the ensuing year. [Id. § 16.]

**Sec. 19. [Selling fruit and vegetables.]**—The president of any state or county agricultural society, may grant a written permit to such persons as he may deem necessary to sell fruit, provisions, and other necessities to such persons as may be in attendance at any such fair, under such regulations and restrictions as the board of directors may prescribe. [Id. § 17.]

**Sec. 20. [Arrest of offenders.]**—The president of any such society, marshal, or any police officer appointed by the board, shall be empowered to arrest, or cause to be arrested, any person or persons engaged in violating any of the provisions contained in section 16\* of this chapter, and cause them forthwith to be taken before some justice of the peace, there to be dealt with as provided for in said section; and they may seize, or cause to be seized, all intoxicating liquors, wine or beer, of any kind, with the vessels containing the same, and all tools or other implements used in any gambling, or other game of chance, and may remove, or cause to be removed, all shows, swings, booths, tents, carriages, wagons, vessels, boats, or any other nuisance that may obstruct, or cause to be obstructed, by collecting persons around or otherwise, any thoroughfare leading to the enclosure in which such agricultural fair is being held; and any person owning or occupying any of the causes of obstruction herein specified, who may refuse or fail to remove

\*Sec. 16 of the original act. Sec. 18 this chapter.

such obstruction or nuisance, when ordered to do so by the president of such society, shall be liable to a fine of not less than five and not more than twenty dollars for every such offense. [Id. § 18.]

ARTICLE II.—FENCES.\*

**SECTION 1. [Live fences].**—Whenever any owner or owners, occupier or occupiers of any lands bordering upon any public road or highway, except a street or alley in a town, may wish to plant and cultivate any hedge or live fence, along the margin of his, her or their land, it shall be lawful for any such person or persons to set and plant any such hedge or live fence, precisely on the line of the road or public highway, and also to place on the margin of such road a protection fence, not to occupy more than six feet of the margin or edge of said road, and such protection fence, when placed opposite any live fence or hedge, actually set and planted, shall be permitted by the county commissioners, and all other persons, to remain for the term of seven years: *Provided*, That the county commissioners may grant permission in writing to the owner or owners of any live fence or hedge to continue such protection fence any term of time which they may deem necessary. [R. S. § 12, 7. G. S. § 17, 79.]

**SEC. 2. [Adjoining occupants].**—When two or more persons shall have lands adjoining, each of them shall make and maintain a just proportion of the division fence between them, except the owner of either of the adjoining lands shall choose to let his lands lie open. [R. S. § 13, 8. G. S. § 18, 80.]

**SEC. 3. [Proportion of value to be paid].**—When any person shall have chosen to let his lands lie open, if he shall afterwards enclose the same, or if the owner of lands adjoining upon the enclosure of another, shall enclose the same upon the enclosure of another, he shall pay to the owner of the adjoining lands a just proportion of the value, at the time, of any division fence that shall have been made by such adjoining owner, or he shall immediately build his proportion of such division fence. [R. S. § 14. G. S. § 19.]

**SEC. 4. [Value, how determined].**—The value of such fence, and the proportion thereof to be paid by such person, and the proportion of the division fence to be made and maintained by him in case of his enclosing his land, shall be determined by any two fence viewers of the precinct, in the county. [R. S. § 15. G. S. § 20.]

**SEC. 5. [Disputes, how settled].**—If disputes arise between the owners of adjoining lands, concerning the proportion of fence to be made or maintained by either of them, such dispute shall be settled by the fence viewers of the county; and in such case it shall be the duty of the fence viewers to distinctly mark and define the proportion of the fence to be made or maintained by each. [R. S. § 16. G. S. § 21.]

**SEC. 6. [Selection of fence viewers].**—When any of the above mentioned matters shall be submitted to fence viewers, each party shall choose one, and if either neglect, after eight day's notice to make such choice, the other party may select both. [R. S. § 17. G. S. § 22.]

**SEC. 7. [Proceedings].**—The two fence viewers so chosen, shall examine the premises and hear the allegations of the parties; in case of their disagreement they shall select another fence viewer to act with them, and the decision of any two of them shall be final upon the parties to such disputes, and upon all parties holding under them. [R. S. § 18. G. S. § 23.]

**SEC. 8. [Decision].**—The decision of the fence viewers shall be reduced to writing, shall contain a description of the fence, and of the proportion to be maintained by each, and their decision upon any of the points in dispute between the parties, submitted to them as aforesaid, and shall be forthwith filed in the office of the county clerk. [R. S. § 19. G. S. § 24.]

**SEC. 9. [Damages].**—If any person who is liable to contribute to the

\*NOTE.—This article embraces: 1. Sections 12-28, 30-33, chapter I, R. S. 1866. [G. S. §§ 17-38, chapter 2. 2. "An act to define a lawful fence and for other purposes." 1867, 12th Sess. Ter. 17.]

erection or reparation of a division fence, shall neglect or refuse, for the period of four weeks after notice in writing so to do, to make and maintain his proportion of such fence, the party injured may make or repair the same at the expense of the party so neglecting or refusing, to be recovered from him with cost of suit; and the party so neglecting or refusing, after notice in writing, shall be liable to the party injured for all damages which thereby accrue, to be determined by any two fence viewers selected as above provided, and the fence viewers shall reduce their appraisal of damage to writing and sign the same. [R. S. § 20. G. S. § 25.]

SEC. 10. [Removal of division fence.]—If any person who shall have made his proportion of division fence, shall be disposed to remove his fence and suffer his land to lie open, after having first given the adjoining owner at least sixty days previous notice in writing of his intention so to do, he may at any time between the first day of December in any year and the first day of April following, but at no other time, remove the same. [R. S. § 21. G. S. § 26.]

SEC. 11. [Removal—Damages.]—If any such fence shall be removed without such notice, the party removing the same shall pay to the party injured all such damages as he may thereby sustain, to be recovered with cost of suit. [R. S. § 22. G. S. § 27.]

SEC. 12. [Construction of fence.]—Whenever a division fence shall be injured or destroyed by fire, floods or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same or his just proportion thereof, within ten days after he shall be thereto required by any person interested therein, such requisition to be in writing and signed by the party making the same. [R. S. § 23. G. S. § 28.]

SEC. 13. [Party injured may make fence.]—If such person shall neglect or refuse to make or repair his proportion of such fence for the period of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered with cost of suit. [R. S. § 24. G. S. § 29.]

SEC. 14. [Witnesses.]—Fence viewers may examine witnesses on any and all questions submitted to them, and either of such fence viewers shall have power to issue subpoenas for and administer oath to such witnesses. [R. S. § 25. G. S. § 30.]

SEC. 15. [Fence viewers.]—In all organized counties, justices of the peace shall be *ex-officio* fence viewers of the county. [R. S. § 26, 10. G. S. § 31, 81.]

SEC. 16. [Fees of fence viewers.]—Fence viewers shall be entitled to one dollar per day each for the time necessarily spent as above provided to be paid in the first instance, by the party requiring the service; and all expenses of the view shall be borne equally between the parties, except in case of view to appraise damages for neglect or refusal to make or maintain a just proportion of the division fence, in which case the cost of view shall be paid by the party in default, and may be recovered as a part of the damage assessed. [R. S. § 27, 10. G. S. § 32, 81.]

SEC. 17. [Damages.]—Damage accruing to any person or persons, under the provisions of this chapter, may be recovered in a civil action, in any court of this state. [R. S. § 28. G. S. § 33.]

SEC. 18. [Lawful fence defined.]—Such structures as shall be used for a fence, to inclose lands, shall be as follows:

I. A rail fence shall consist of at least six rails, said rails to be secured by stakes at the end of each panel, well set in the ground, with a rider upon said stakes. A board fence shall consist of not less than three boards of at least five inches in width and one inch thick, said boards to be well secured to posts, the posts to be not more than eight feet apart. A rail and post fence shall consist of at least three rails, well secured at each end to posts, and posts to be not more than ten feet apart. A pole and post fence shall consist of not less than four poles, to be well secured to posts, said posts to be not more than seven feet

apart. A wire fence shall consist of at least four wires, of a size not less than number nine fencing wire, to be well secured to posts, said posts to be at no greater distance than one rod from each other; and there shall be placed between every two of said posts, one stake or post to which the wire shall be attached.

II. The fences described in the preceding section shall be at least four and one-half feet in height and in the construction of said fences the spaces between the boards, rails, poles, and wires herein provided for, shall not exceed one foot each, measuring from the top.

III. A hedge fence of osage orange shall consist of at least one row of plants, said plants not to be more than eight inches apart at the surface on the ground, and said hedge shall be such as fence viewers shall decide a lawful fence. A hedge fence of willow or other trees used for that purpose, shall consist of at least one row of such trees standing not more than fifteen inches apart at the surface of the ground, and at least two and one-half inches in diameter, and at least six feet in height.

IV. Fence known as "Warner's Patent" shall be at least four and a half feet in height, and consist of not less than five boards, said boards to be at least five inches wide, and one inch thick. [12 Sess. Ter. 1867, p. 17. G. S. § 34, 82.]

SEC. 19. [Damages by animals.]—If any domestic animal break into any enclosure, the person injured thereby shall recover the amount of damage done, if it shall appear that the fence through which said animal broke was a lawful fence. [R. S. § 80, 10. G. S. § 85, 82.]

SEC. 20. [Tender—Costs.]—If before trial the owner of such trespassing animals shall have tendered to the person injured, an amount, in lieu of damage and costs which may have accrued, which shall equal the amount of damage afterward awarded by the court or by the jury, or shall offer in writing to confess judgment for the same, and if notwithstanding, the said injured person refusing said offer, cause the trial to proceed, he shall pay costs, and recover only the damage awarded. [R. S. § 31. G. S. § 86.]

SEC. 21. [Planting crop on land not enclosed.]—If any person sow any grain, or plant any crop, without inclosing the same with a sufficient fence, as above provided, he shall be liable for all damages that any person or persons may sustain in consequence of such neglect to inclose the same. [R. S. § 82. G. S. § 87.]

SEC. 22. [Article not applicable, when.]—This subdivision shall not extend to or in any wise affect any county in this state, in which horses, mules, cattle, sheep or swine, are restrained from running at large by reason of legislative enactment. [R. S. § 83. G. S. § 88.]

#### ARTICLE III.—HERD LAW.\*

SEC. 1. [Owners of stock liable for damages.]—That the owners of cattle, horses, mules, swine, and sheep in this state, shall hereafter be liable for all damage done by such stock upon the cultivated lands in this state as herein provided by this act. [1871 § 1, 120. G. S. 83.]

SEC. 2. [Damage—A lien on stock.]—That all damage to property so committed by such stock running at large, shall be paid by the owners of said

SEC. 18. This section is inserted in place of the original section 29, R. S., p. 10, the same taking effect May 1, 1867, and evidently repealing the original section by implication, which was as follows:

"SEC. 29. Any structure or hedge or ditch in the nature of a fence used for purposes of enclosure, which is such as good husbandmen generally keep, shall be deemed a lawful fence."

NOTE.—This article embraces: 1. "An act for a general herd law to protect cultivated lands from trespass by stock." Laws 1871, 120. [G. S. 83-86.] It repealed prior laws upon the subject and applying to particular localities. Certain special acts (Laws 1871, 211.—Special laws 1873.—Laws 1875, 293,—"An act to allow cattle, horses, sheep and hogs to run at large on McKissick's Island, in Nemaha county," approved Feb. 24, 1881), are omitted from this volume. 2. "Acts amendatory of the herd law." [1875, 186. 1877, 62.] 3. "An act to restrain sheep and swine from running at large." Laws 1875, 190. 4. "An act to prevent damage by certain domestic animals during the night time in the state of Nebraska, in organized counties where no herd law is in force." Laws 1879, 165.

SEC. 1. Construing this and other similar laws it has been held that owner of stock is not liable for trespass by them on uncultivated, uninclosed land. 10 Neb. 492. But see section 8, p. 51, as amended since this decision was rendered.

stock; and the person whose property is so damaged thereby, may have a lien upon such trespassing animals, for the full amount of damages and costs, and may enforce the collection of the same by the proper civil action.

**SEC. 3. [Notice.]**—That when any such stock shall be found upon the cultivated lands of another, it shall be lawful for the owner or person in possession of said lands, to impound said stock, and if the owner of said stock can be found, and is known to the taker-up, it shall be the duty of said taker-up to notify said owner by leaving a written notice at his usual place of residence, with some member of his family over the age of fourteen, or in the absence of such person, by posting a copy of such notice on the door of said residence, of the taking up of said stock, describing it, and stating the amount of damages claimed; also, the name of his arbitrator, and requiring him within forty-eight hours after receiving said notice, to take the said property away, after making full payment of all damages and costs to the satisfaction of said taker-up of trespassing animals. Said notice may be in the following form: Mr. ———: You are hereby notified that on the ——— day of ———, 18——, your stock, of which I now have in my possession—(here describe the animal or animals)—did trespass upon my land, and damaged the same to the amount of ———. You are required to pay the above charges within forty-eight hours from the delivery of this notice, or the aforesaid stock will be sold, as provided by law. I have appointed Mr. ——— to act as arbitrator should you not feel satisfied with the amount of damages claimed in the within notice. *Provided*, That no claim for damages shall be maintained by the taker-up without the notice contemplated in this section shall have been given, when the owner is known by the taker-up of such stock.

**SEC. 4. [Refusal of owner to appoint arbitrator.]**—If the owner of said stock shall refuse, within forty-eight hours after having been notified in writing, to pay said damages claimed, or appoint an arbitrator to represent his interest, said animal or animals shall be sold upon execution as required by law, when said amount of damages and costs have been filed with any justice of the peace of the county within which said damages may have been sustained.

**SEC. 5. [Arbitrators.]**—In case the parties interested can not agree as to the amount of damages and costs sustained, each party may choose a man, and, in case the two men chosen cannot agree, they shall choose a third man, who, after being duly sworn for the purpose herein named, the three shall proceed to assess the damages, possessing for that purpose the general power of arbitrators.

**SEC. 6. [Award.]**—The said arbitrator or arbitrators shall make [make] an award in writing, which, if not paid within five days after the award has been made, may be filed with any justice of the peace in the same county, and shall operate as a judgment, which judgment shall be a lien upon the stock so taken up, and execution may issue upon said stock for the collection of said damages and costs, as in other cases: *Provided*, That either party may have an appeal from said judgment, as in other cases before justices of the peace. Said arbitrators shall be allowed two dollars each for their services: *Provided further*, That if before the trial by said arbitrator or arbitrators, the owner of said stock shall tender to the person injured, an amount in lieu of said damage and costs which may have accrued, which shall equal the amount of damage afterward awarded by the arbitrators, court or jury, or shall affirm [offer in] writing, to confess judgment for the same, and if, notwithstanding the said injured person refusing said offer, cause the trial to proceed, he shall pay costs and necessarily the damage awarded. [Amended, 1875, 186.]

**SEC. 7. [Estrays.]**—In case the owner of said stock is not known or found in said county, as herein set forth, the taker-up of said stock so trespassing up-

**SEC. 3.**—The notice must be given within a reasonable time. As to what is a reasonable time depends on the circumstances of each case. 6 Neb. 271. A notice was signed by the taker-up as follows: "This is to notify you that I did, on Saturday, Nov. 7, 1874, take up one hog belonging to you, on section 4, east  $\frac{1}{2}$  of s. e.  $\frac{1}{4}$  of said section. I am damaged to the amount of \$3.00. I do hereby appoint E. B. Smith and A. M. Smith as arbitrators to appraise said damages if you do not see fit to pay the same with costs." It was served on the owner Nov. 10, 1874. Held sufficient to give the taker-up a lien on the property. 6 Neb. 273.



on cultivated lands, shall, in such cases, proceed as provided by law regulating estrays, and the stock shall be held liable for all damages and costs.

SEC. 8. [**Cultivated lands.**—That cultivated lands, within the meaning of this act, shall include all forest trees, fruit trees, and hedge-rows planted on said lands, also all lands surrounded by a plowed strip, not less than one rod in width, which strip shall be plowed at least once a year. [Amended Feb. 28. Took effect June 1, 1881.]

SEC. 9. [**Exception.**—It shall be unlawful for any stock to run at large upon the lands designated in sections seven and eight of this act, at any season of the year, except as exempted by section ten of this act; *Provided*, That the operations of this act shall not extend to the counties of Dakota, Dixon and Cedar; *Provided further*, That it is the intention of this act to extend all the provisions of the original act entitled, "An act to protect cultivated lands from trespass by stock," approved March 8, 1871, to all the territory within this state not specially exempted by the provisions of said original act, and this act. [Amended and took effect Feb. 19, 1877. Laws 1877, 62.]

SEC. 10. [**Suspending the law.**—The operation of this law may be suspended within any county in this state, in the manner as hereinafter provided; whenever the qualified voters of any county in this state desire to have the operation of this law suspended, within said county, and a majority of said voters shall apply by petition to the county commissioners of said county, praying for an election to be called for such purpose, it shall be the duty of said county commissioners to submit at the next general or special election, to the qualified voters of said county, a proposition for the suspension of the operation of said law, within said county, which proposition shall be in form as follows: "For suspension of herd law," "Against suspension of herd law." Said proposition shall be written or printed on the ballots of those voting at such election; and if at such election, it shall appear that a majority of the votes cast shall be for such proposition, then the operation of such law shall be suspended within the limits of such county, at the expiration of twenty days from the official canvass of the vote in said county.

SEC. 11. [**Action against owner.**—Nothing herein contained shall be so construed as to prevent any owner of cultivated lands, or fruit and forest trees from maintaining an action for all damages caused by stock which has escaped or been driven away from the premises of the party, thus damaged, against the owner of the stock causing such damage.

SEC. 12. [**Sheep and swine.**—That from and after the first day of March, A. D. 1875, sheep and swine shall be restrained from running at large in the state of Nebraska. [1875 § 1, 190.]

SEC. 13. [**Damages.**—That all damages to property committed by such stock so running at large, shall be paid by the owner of said stock, and the person whose property is damaged thereby, may have a lien upon said trespassing animal for the full amount of damages and costs, and enforce and collect the same by the proper civil action. [Id. § 2.]

SEC. 14. [**Running at large in the night time.**—No cattle, horses, mules, swine, or sheep, shall run at large during the night time, between sunset and sunrise, in the state of Nebraska, and the owner or owners of any such animal shall be liable in an action for damages done during such night time. [1879 § 1, 165.]

SEC. 15. [**Damages.**—Damages shall be assessed and collected by notice given to owners, and arbitrators chosen, stock sold, judgment awarded; and in case of estrays, as provided in sections 40, 41, 42, 43, 44, 45 and 46, of chapter two, General Statutes entitled "Agriculture." [Id. § 2.]

#### ARTICLE IV.—MISCELLANEOUS.

##### DAMAGES TO CULTIVATED LANDS.

SEC. 1. [**Penalty.**—That any person or persons who shall go upon or pass

SEC. 9. Two amendments were made to the original section. Laws 1875, pp. 188, 189. The one on page 189 was repealed by Laws 1877, p. 61. The one on page 188 was amended by Laws 1877, p. 62, and is inserted above.

SEC. 15. The sections referred to, are sections 2-6 this article.

in the state, shall be deemed a stock grower. Any person who shall drive or bring neat cattle into or through this state, shall be deemed a cattle drover. [1879 § 1, 67.]

SEC. 2. [Driving off cattle.]—That any cattle drover, or his employee, who shall drive off any neat cattle, horses, mules, or sheep, belonging to another, intentionally or through neglect, shall, on conviction thereof, by any court of competent jurisdiction, be fined in any sum not more than one hundred (100) dollars for each and every head of cattle, horses, mules or sheep so driven off. [Id. § 2.]

SEC. 3. [Description and ownership.]—In any indictment or complaint under this act, the description of any kind or class of neat cattle shall be deemed sufficient if described as cattle; and for the purpose of this act the proof of brand shall be deemed to be *prima facie* evidence of ownership of such stock. [Id. § 3.]

SEC. 4. [Male animals not to run at large.]—That no stallion over the age of eighteen months; nor any Mexican, Texan, or Cherokee bull over the age of ten months, nor any Mexican ram over the age of eight months, shall be permitted to run at large in the state of Nebraska. The owner, or person in charge of such animal or animals as are prohibited from running at large by this section, who shall permit such animal or animals to run at large may be fined for each offense not less than fifty (\$50) dollars nor more than two hundred (\$200) dollars, and it shall be lawful for any person to castrate, or cause to be castrated, any such animal found running at large: *Provided*, That if any person shall castrate any stallion, bull, or ram, and it shall on proper evidence before any competent court be proven to the satisfaction of said court that such animal was not of a class of stock prohibited from running at large by this act, said person shall be liable for damages to the amount of the value of said animal so castrated, and the costs of suit: *Provided, also*, That for the purpose of this act that any bull possessing one-half ( $\frac{1}{2}$ ) Texan, Mexican, or Cherokee blood shall not be deemed a Texan, Mexican, or Cherokee bull, as the case may be; and any ram possessing one-half Mexican blood shall not be deemed a Mexican ram. [Id. § 4.]

SEC. 5. [Injuries by driven cattle.]—Any person owning or having charge of any drove of cattle, horses, or sheep numbering one (1) head or more than that number in any such drove of cattle, horses, or sheep, and shall drive the same into or through any county of Nebraska of which the owner is not a resident, or land owner, or stock grower, and when the land in said county is already occupied by settlers on ranches, it shall be the duty of said owner or person in charge of said horses, cattle, or sheep to prevent the same from mixing with the cattle, horses, or sheep belonging to actual settlers, and also to prevent said drove of cattle from trespassing on such land as may be the property of the actual settler, or may be held by him under a homestead, pre-emption, or a leasehold right, and used by him for the grazing of animals, growing hay, or timber, or other agricultural purposes, or doing injury to the ditches made for irrigation of crops. If any owner or owners or persons in charge of any such drove of cattle, horses, or sheep shall wilfully, carelessly, or negligently injure any resident within the state by driving said drove of cattle, horses, or sheep from the public highways and herding the same on the lands occupied and improved by settlers in possession of the same, it shall constitute a misdemeanor and shall be punished by a fine of not less than twenty (\$20) dollars and not more than one hundred (\$100) dollars, at the discretion of the court, and render the owner or owners, or person in charge of the drove of cattle, horses, or sheep liable for such damages as may be done to the property of said settler. [Id. § 5.]

SEC. 6. [Damages.]—When the stock of any person shall be driven off its range within Nebraska against his will by the drovers of any drove, and the same shall be found among such drove, every person engaged as drover of said drove shall be liable for damages to the party injured to the amount of the full value for the animal, for each head so driven off, together with all costs accruing in the trial of said cause, and said herd of stock shall be liable for the same, or a sufficient number to cover all damages and costs. [Id. § 6.]

**SEC. 7. [Cattle to be separated.]**—When the stock of any resident of the state of Nebraska shall either mix with any drove of any animals it shall be the duty of the drover or drovers, or person in charge of such drove, to cut out and separate such stock from said droves immediately. Every person, either owner or drover, or otherwise connected with said drove, who shall neglect to comply with the provisions of this section shall be fined in any sum not exceeding one thousand (\$1,000) dollars. [Id. § 7.]

**SEC. 8. [Removal of hides of dead stock.]**—It shall be unlawful for any person other than the owner or his agent or employee to skin or remove from the carcass the skin, hide or pelt of any neat cattle or sheep found dead, except when such stock is killed by railroad trains, when the employees of such railroads may remove the hides from stock so killed. [Id. § 8.]

**SEC. 9. [Rewards.]**—The county commissioners of the several counties may offer and pay rewards for the detection of those violating this act. [Id. § 9.]

#### CONTAGIOUS DISEASES.

**SEC. 10. [Diseased cattle.]**—That every person shall so restrain his diseased or distempered cattle, or such as are under his care, that they may not go at large; and no person or persons shall drive any diseased or distempered cattle affected with any contagious or infectious disease, into or through this state or from one point thereof to another. Any person or persons offending against this section, shall on conviction thereof before any justice of the peace, forfeit not less than five nor more than twenty-five dollars for every head of such cattle, and be liable for all costs and damages. [1867 § 1, 74. G. S. 89.]

**SEC. 11. [Cattle to be impounded.]**—Any justice of the peace, upon proof before him, that any cattle are going at large or are driven in or through his county in violation of the preceding section, shall order a constable or sheriff to impound them, and the owner thereof shall be held liable for all costs and damages. [Id. § 2.]

**SEC. 12. [Fees of officers.]**—The sheriff or constable who may execute the order of any justice of the peace as aforesaid, to impound any such cattle, shall have twenty-five cents per head for the first fifty, and five cents for each additional head, to be paid by the defendant upon conviction thereof, but in case the defendant be discharged, then such costs to be paid by the complainant; and if any officer to whom any order under this law is directed, should fail to execute, he shall forfeit, in case of a failure, a sum not less than one hundred dollars. [Id. § 3.]

**SEC. 13. [Glanders.]**—It shall not be lawful for any person to use, let, sell or permit to run at large any horse, mule or ass diseased with the glanders. Any person violating the provisions of this section shall pay a fine of not less than five nor more than fifty dollars, and shall be liable for all damages. [Id. § 4.]

**SEC. 14. [Fines.]**—All fines and forfeitures incurred under the provisions of this act shall be recovered by action before any justice of the peace, and all such fines shall be paid into the school fund, in and for the county having jurisdiction of the case. [Id. § 5.]

**SEC. 15. [Judgment.]**—In all cases of conviction under the provisions of this act, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment for the use of the common schools of the county. [Id. § 6.]

#### DESTRUCTION OF ANIMALS BY DOGS.

**SEC. 16. [Owners of dogs liable for damages.]**—That the owner or owners of a dog or dogs shall be liable in an action for all damages that may accrue to any person or persons by reason of such dog or dogs killing, wounding, worrying or chasing any sheep or other domestic animal belonging to such other

SECS. 10-15. "An act to provide for the protection of stock from contagious diseases." Laws 1867, 74. Took effect June 20, 1867. G. S. 89. And see secs. 73, 76 and 77 criminal code, passed subsequent to this act.

person or persons; and the damage done may be recovered in any court having jurisdiction of the amount claimed. [1877 § 1, 156.]

SEC. 17. [**Joint liability.**—If two or more dogs owned by different persons shall kill, wound, chase or worry any sheep or other domestic animal, such persons shall be jointly and severally liable for all damage done by such dogs. [Id. § 2.]

SEC. 18. [**Dog tax.**—The municipal authorities of any county, city, town or township shall have authority by ordinance or resolution, entered at large on the proper journal or record of proceedings of such municipality, to impose a license tax of not more than five dollars for each dog, on the owner or harbinger of any dog or dogs, which license tax shall constitute a special fund for the payment of all damages done by dogs within the limits of the body imposing the same, to be paid under such regulations as shall be provided by such ordinance or resolutions. [Id. § 3.]

SEC. 19. [**Dogs to be killed.**—Any person shall have the right to kill any dog found doing any damage aforesaid to any sheep or domestic animal, or shall have just and reasonable ground to believe that such dog has been killing wounding, chasing or worrying such sheep or animal, and no action shall be maintained for such killing. [Id. § 4.]

SEC. 20. [**Dog collar.**—It shall be the duty of every owner or owners of any dog or dogs to securely place upon the neck of such dog or dogs a good and sufficient collar with a metallic plate thereon, on which shall be plainly inscribed the name of such owner. It shall be lawful for any person to kill any dog found running at large on whose neck there is no collar as aforesaid, and no action shall be maintained for such killing. [Id. § 5.]

SEC. 21. [**Who deemed owner.**—Every person who shall harbor about his or her premises a collarless dog, for the space of ten days, shall be taken and held as the owner, and shall be liable for all damage which such dog shall commit. [Id. § 6.]

SEC. 22. [**Penalty.**—The owner or owners of any dog or dogs who shall permit the same to run at large for ten days after this act shall take effect, without such collar as hereinbefore described being securely placed upon the neck of such dog or dogs, shall be deemed guilty of a misdemeanor, and fined in any sum not exceeding twenty-five dollars, which when collected shall be paid to the county treasury for the benefit of the school fund of the county in which the fine was imposed. [Id. § 7.]

#### DEER.

SEC. 23. [**Penalty for destruction of deer.**—If any person or persons within the counties of Burt, Washington, Douglas, Sarpy, Cass, Saunders and Dodge shall chase or pursue any deer with any hound or dog, such person or persons on conviction thereof before any court of competent jurisdiction shall pay a fine of twenty dollars or be confined in the county jail for a period of not less than ten nor more than twenty days, at the discretion of the court, and shall pay costs of prosecution. Such fines shall be paid to the school fund of the county in which such offense was committed. [G. S. § 1, 90.]

#### STATE BOUNTIES FOR WOLVES, WILD CATS AND COYOTES.

SEC. 24. [**Bounties.**—That any person killing wolves, wild cats or coyotes within the boundaries of the state of Nebraska, and presenting the scalps of the same, with the two ears and face down to the nose, to the county clerk of the county in which the same were killed, with satisfactory proof upon oath that the

SECS. 16-22. "An act to prevent sheep and other domestic animals from being killed by dogs." Laws 1877, 156. Took effect June 1, 1877.

SEC. 18. See sec. 69. Subdivision X. Chapter 14.

SEC. 23. "An act to prevent the chasing and destruction of deer by hounds in certain counties of the state of Nebraska." G. S. 90. Took effect February 27, 1873.

SECS. 24-27. "An act to provide for the payment of bounties for the destruction of wild animals in the state of Nebraska." Laws 1877, 213. Took effect June 1, 1877.

same were killed within the boundaries of the state of Nebraska, shall be entitled to the following bounties: for every wolf so killed, one dollar; for every wild cat so killed, one dollar; for every coyote so killed, one dollar. Certificates of such bounties, when so allowed, shall be issued by the county clerk to the person entitled thereto, and upon the same being filed with the auditor of public accounts the said auditor shall draw his warrant on the treasury of the state against the general fund, for the amount of such certificate, in favor of the person named therein or his assignee. [1877 § 1, 213.]

SEC. 25. [Certificate.]—It shall be the duty of the county clerk to give such persons on receiving said scalps a certificate of the number and kind of such scalps accepted by him for bounty, and deface such scalps by cutting the same in two parts, so as to separate the two ears, and shall keep a record of the number and kind by him certified and destroyed. [Id. § 2.]

SEC. 26. [Oath.]—All scalps upon which bounties are claimed shall be presented to the clerk of the county in which the animals were taken and killed, and the applicant for bounty will be required by the said clerk to make his statement under oath as to where the said animals were taken and killed. [Id. § 3.]

SEC. 27. [Penalty.]—Any person driving, baiting, enticing, bringing or taking any of the animals mentioned in this act from outside the boundaries of this state, or from any one unorganized territory in this state, into any organized county thereof, for the purpose of procuring bounties thereon, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five nor more than one hundred dollars, for each and every offense so committed. [Id. § 4.]

#### LIENS UPON LIVE STOCK.

SEC. 28. [Lien for keeping.]—When any person shall procure, contract with, or hire any other person to feed and take care of any kind of live stock, it shall be unlawful for him to gain possession of the same by writ of replevin, or other legal process, until he has paid, or tendered the contract price, or a reasonable compensation for taking care of the same. [Laws 12th Sess. Terr. 1867, 12. G. S. 91.]

#### COUNTY BOUNTIES FOR WOLVES, WILD CATS AND COYOTES.

SEC. 29. [Bounties.]—That any person or persons killing wolves, wild cats, or coyotes within the boundaries of such counties as may at any election, by a vote of the majority of electors voting, to determine as hereafter provided, and presenting the scalps of the same, with the two ears and face down to the nose, to the county clerk of the county in which the same were killed, with satisfactory proof in writing, upon oath, that the same were killed within the boundaries of the aforesaid counties, shall be entitled to the following bounties: For every wolf so killed, two dollars; for every wild cat so killed, two dollars; for every coyote so killed, two dollars. Certificates of such bounties when so allowed, shall be issued by the county clerk to the person entitled thereto, and upon the presentation of such certificates to the county treasurer said treasurer shall pay to the holder of such certificates the amount named therein out of the county general fund. [1879 § 1, 162.]

SEC. 30. [Duty of county clerk.]—It shall be the duty of the county clerk to give such person or persons, on receiving said scalps, a certificate of the number and kind of such scalps accepted by him for bounty, and deface such scalps by cutting the same in two parts, so as to separate the two ears, and shall keep a record of the number and kind by him certified and destroyed. [Id. § 2.]

SEC. 31. [Proof of killing.]—All scalps upon which bounties are claimed shall be presented to the clerk of the county in which the animals were taken and

SEC. 28. "An act to provide liens on live stock for their keeping." Laws 12th Sess. Terr. 1867, 12 G. S. 91. Took effect Feb. 18, 1867. Cited 8 Neb. 505.

SEC. 29-35. "An act to provide for the payment of bounties for the destruction of wild animals in the state of Nebraska." Laws 1879, 162. Took effect June 1, 1879. Whether this act repeals the act of 1877, secs. 24-27 this chapter, *quære*.

killed, and the applicant for bounty will be required by the said clerk to make his statement in writing, under oath, as to where the said animals were taken and killed, and any person making a false statement under oath as provided in this act, shall be liable to prosecution for perjury, and suffer the penalties of the same as provided by the laws of this state. [Id. § 3.]

SEC. 32. [Penalty].—Any person or persons driving, baiting, enticing, bringing, or taking any of the animals mentioned in this act from outside the boundaries of such counties as are provided in this act, for the purpose of procuring bounties thereon, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than twenty-five nor more than fifty dollars for each and every offense so committed. [Id. § 4.]

SEC. 33. [Election].—Upon the petition of fifty freeholders of any county, to the county commissioners or county board, favorable to granting bounties for the destruction of wild animals, as provided in section one of this act, it shall be the duty of said county commissioners or county board to present the prayer of said petitioners to the electors of such county at the next succeeding election. [Id. § 5.]

SEC. 34. [Ballots].—The voting upon the aforesaid proposition shall be by ballot, the ballots having written upon them "For bounties," or "Against bounties," and the votes to be canvassed as other votes are canvassed in precinct elections, and if a majority of the votes cast at such election be in favor of the proposition as contained in this act, the same shall be in effect within ninety days after such election. [Id. § 6.]

SEC. 35. [Revocation].—Any county desiring to be released from the payment of bounties, as provided in this act, may revoke the same by the same authority and manner of procedure as provided in section five of this act, for the establishment of the same. [Id. § 7.]

## CHAPTER 5.—APPORTIONMENT—LEGISLATIVE.

SECTION 1. [Number].—That the senate shall consist of thirty-three members, and the house of representatives shall consist of one hundred members. [1881 § 1, chap. 4.]

SEC. 2. [Districts].—That the state of Nebraska shall be formed into senatorial and representative districts, and senators and representatives shall be apportioned as follows:

### SENATORIAL DISTRICTS.

District No. 1 shall consist of the county of Richardson, and be entitled to one senator. District No. 2 shall consist of the county of Nemaha, and be entitled to one senator. District No. 3 shall consist of the counties of Pawnee and Johnson, and be entitled to one senator. District No. 4 shall consist of the county of Otoe, and be entitled to one senator. District No. 5 shall consist of the county of Cass, and be entitled to one senator. District No. 6 shall consist of the county of Douglas, and be entitled to two senators. District No. 7 shall consist of the counties of Douglas and Sarpy, and be entitled to one senator. District No. 8 shall consist of the counties of Washington and Burt, and be entitled to one senator. District No. 9 shall consist of the county of Dodge, and be entitled to one senator. District No. 10 shall consist of the counties of Stanton, Cuming, Madison and Wayne, and be entitled to one senator. District No. 11 shall consist of the counties of Dakota, Dixon, Cedar, Knox, and be entitled to one senator. District No. 12 shall consist of the counties of Antelope, Holt, Wheeler, Pierce, and Valley, and the unorganized territory west of Holt and

NOTE. "An act for an act to district the State into Senatorial and Representative districts and for the apportionment of Senators and Representatives and to fix the number of the same." Approved Feb. 28, 1881. Took effect June 1, 1881.

Wheeler and east of the thirty-first senatorial district, and be entitled to one senator. District No. 13 shall consist of the counties of Platte and Colfax, and be entitled to one senator. District No. 14 shall consist of the counties of Butler and Polk, and be entitled to one senator. District No. 15 shall consist of the county of Saunders, and be entitled to one senator. District No. 16 shall consist of the county of Lancaster, and be entitled to two senators. District No. 17 shall consist of the county of Seward, and be entitled to one senator. District No. 18 shall consist of the county of York, and be entitled to one senator. District No. 19 shall consist of the county of Fillmore, and be entitled to one senator. District No. 20 shall consist of the county of Saline, and be entitled to one senator. District No. 21 shall consist of the county of Gage, and be entitled to one senator. District No. 22 shall consist of the counties of Jefferson and Thayer, and be entitled to one senator. District No. 23 shall consist of the counties of Webster, Franklin and Nuckolls, and be entitled to one senator. District No. 24 shall consist of the county of Clay, and be entitled to one senator. District No. 25 shall consist of the counties of Hamilton and Hall, and be entitled to one senator. District No. 26 shall consist of the counties of Howard, Sherman and Buffalo, and be entitled to one senator. District No. 27 shall consist of the counties of Boone, Nance, Merrick and Greeley, and be entitled to one senator. District No. 28 shall consist of the county of Adams, and be entitled to one senator. District No. 29 shall consist of the counties of Kearney, Harlan and Phelps, and be entitled to one senator. District No. 30 shall consist of the counties of Red Willow, Furnas, Gosper, Frontier, Hitchcock, Hayes, Dundy and Chase, and be entitled to one senator. District No. 31 shall consist of the counties of Dawson, Custer, Lincoln, Keith, Cheyenne and Sioux, and the unorganized territory north of Keith and Lincoln, and be entitled to one senator.

#### REPRESENTATIVE DISTRICTS.

District No. 1 shall consist of the county of Richardson, and shall be entitled to three representatives. District No. 2 shall consist of the county of Nemaha, and be entitled to two representatives. District No. 3 shall consist of the county of Johnson, and be entitled to one representative. District No. 4 shall consist of the county of Pawnee, and be entitled to one representative. District No. 5 shall consist of the counties of Pawnee and Johnson, and be entitled to one representative. District No. 6 shall consist of the county of Otoe, and be entitled to three representatives. District No. 7 shall consist of the county of Cass, and be entitled to four representatives. District No. 8 shall consist of the county of Sarpy, and be entitled to one representative. District No. 9 shall consist of the county of Douglas, and be entitled to eight representatives. District No. 10 shall consist of the county of Washington, and be entitled to two representatives. District No. 11 shall consist of the county of Burt, and be entitled to two representatives. District No. 12 shall consist of the county of Dodge, and be entitled to two representatives. District No. 13 shall consist of the county of Cuming, and be entitled to one representative. District No. 14 shall consist of the county of Madison, and be entitled to one representative. District No. 15 shall consist of the counties of Stanton and Wayne, and be entitled to one representative. District No. 16 shall consist of the county of Dakota, and be entitled to one representative. District No. 17 shall consist of the county of Dixon, and be entitled to one representative. District No. 18 shall consist of the counties of Cedar and Pierce, and be entitled to one representative. District No. 19 shall consist of the county of Knox, and be entitled to one representative. District No. 20 shall consist of the county of Holt and the unorganized territory west of Holt and east of the fifty-eighth representative district, and be entitled to one representative. District No. 21 shall consist of the county of Antelope, and be entitled to one representative. District No. 22 shall consist of the county of Boone and be entitled to one representative. District No. 23 shall consist of the county of Platte,

and be entitled to two representatives. District No. 24 shall consist of the county of Colfax, and be entitled to one representative. District No. 25 shall consist of the counties of Platte and Colfax and be entitled to one representative. District No. 26 shall consist of the county of Butler, and be entitled to two representatives. District No. 27 shall consist of the county of Polk, and be entitled to one representative. District No. 28 shall consist of the counties of Polk, Merrick, and Nance, and be entitled to one representative. District No. 29 shall consist of the county of Saunders and be entitled to three representatives. District No. 30 shall consist of the county of Lancaster, and be entitled to six representatives. District No. 31 shall consist of the county of Seward, and be entitled to two representatives. District No. 32 shall consist of the county of York, and be entitled to two representatives. District No. 33 shall consist of the county of Fillmore, and be entitled to two representatives. District No. 34 shall consist of the county of Saline and be entitled to three representatives. District No. 35 shall consist of the county of Gage and be entitled to three representatives. District No. 36 shall consist of the county of Jefferson, and be entitled to two representatives. District No. 37 shall consist of the county of Thayer and be entitled to two representatives. District No. 38 shall consist of the county of Nuckolls, and be entitled to one representative. District No. 39 shall consist of the county of Webster, and be entitled to one representative. District No. 40 shall consist of the county of Franklin and be entitled to one representative. District No. 41 shall consist of the counties of Franklin and Webster, and be entitled to one representative. District No. 42 shall consist of the county of Clay, and be entitled to two representatives. District No. 43 shall consist of the county of Hamilton, and be entitled to two representatives. District No. 44 shall consist of the county of Merrick, and be entitled to one representative. District No. 45 shall consist of the county of Hall, and be entitled to two representatives. District No. 46 shall consist of the county of Howard, and be entitled to one representative. District No. 47 shall consist of the county of Adams, and be entitled to two representatives. District No. 48 shall consist of the county of Buffalo, and be entitled to two representatives. District No. 49 shall consist of the counties of Valley, Greeley and Wheeler, and the unorganized territory west of Wheeler and east of the fifty-seventh representative district, and be entitled to one representative. District No. 50 shall consist of the counties of Sherman and Custer and be entitled to one representative. District No. 51 shall consist of the county of Kearney, and be entitled to one representative. District No. 52 shall consist of the county of Harlan, and be entitled to one representative. District No. 53 shall consist of the counties of Harlan and Phelps, and be entitled to one representative. District No. 54 shall consist of the county of Furnas, and be entitled to one representative. District No. 55 shall consist of the county of Red Willow, and be entitled to one representative. District No. 56 shall consist of the counties of Frontier, Gosper, Hitchcock, Hayes, Dundy and Chase, and be entitled to one representative. District No. 57 shall consist of the county of Dawson, and be entitled to one representative. District No. 58 shall consist of the county of Lincoln and the unorganized territory north of Lincoln and south of the twentieth representative district, and be entitled to one representative. District No. 59 shall consist of the counties of Cheyenne, Keith, Sioux, and the unorganized territory north of Keith, and be entitled to one representative.

#### CHAPTER 6.—ASSIGNMENTS.

**SECTION 1. [Inventory].**—That in every case in which any person shall make a voluntary assignment of his estate, real or personal, or both, or any part thereof, to any person or persons in trust for his creditors, it shall be the

NOTE. "An act relating to voluntary assignments for the benefit of creditors, and to assignees therein named, and the settlement of their accounts." Took effect June 1, 1877.

SEC. 1. Property held by an assignee, under a valid assignment, is not subject to attachment or garnishment for the assignors debts. 7 Neb. 283. An assignment under a law of Illinois [Laws 1877, p. 115] is no bar to creditors right of action in Nebraska. 10 Neb. 220.



duty of the assignee or assignees, within thirty days after the execution thereof, to file in the office of the clerk of the district court, in the county in which the assignor shall reside, an inventory of all the estate or effects so assigned, accompanied with an affidavit by such assignees that the same is a full and complete inventory of all such estate and effects, so far as the same has come to their knowledge. [1877 § 1, 24.]

**SEC. 2. [Appraisers.]**—The district court of such county, or judge thereof in vacation, shall, upon application of such assignee or assignees, appoint three disinterested and competent persons to appraise the estate and effects so assigned; and said appraisers, having first taken an oath or affirmation before some person having authority to administer oaths, to discharge their duty with fidelity, shall forthwith proceed to make an appraisement of the estate and effects assigned according to the best of their judgment, and said appraisers shall receive the same compensation as is allowed by law to appraisers of real estate taken upon execution.

**SEC. 3. [Bond of assignee.]**—The assignee or assignees aforesaid shall, as soon as such inventory and appraisement shall have been filed, give a bond or bonds, with one or more sufficient sureties, to be approved by the clerk of said court, in double the amount of the appraised value of the estate so assigned; which bond shall be taken in the name of the State of Nebraska, and the condition thereof shall be as follows, viz.:

"The condition of this obligation is such that if the above bounden..... assignees of..... shall, in all things, comply with the provisions of this act of the legislature in such case made, and shall faithfully execute the trust confided to them, then the above obligation to be void, otherwise to remain in full force and virtue."

And such bond shall be filed in the office of the clerk of said court, and shall by him be entered on the journal and record of said court, and shall inure to the use of all persons interested in the property assigned.

**SEC. 4. [Appointments to be published.]**—The assignee or assignees aforesaid shall, immediately after the execution of such bond aforesaid, publish in some newspaper printed and published in said county, or if no such newspaper shall be printed in said county, then in some newspaper in general circulation in said county, a notice of such appointment as assignee; and such [each] creditor of such assignor shall, within six months thereafter, file with said assignee a statement of his or her claim against said assignor, and on failure to file such statement, such claimant shall be barred from any interest or share in any assets or proceeds of the estate of such assignor appropriated and applied to creditors as dividends or distribution of the estate of such assignor.

**SEC. 5. [Effect of assignment.]**—All assignments of property in trust which shall be made by any debtor on account of inability, at the time of the assignment, to pay his debts, to prefer one or more creditors, (except for the payment of wages of labor,) shall be held and construed to inure to the benefit of his creditors in proportion to their respective demands, and all such assignments shall be subject, in all respects, to the provisions of this act; *Provided*, That the claims of laborers thus preferred shall not severally exceed the sum of one hundred dollars.

**SEC. 6. [Conditions.]**—Any condition in such assignment for the payment

**SEC. 3.** The clerk may act as assignee and his approval of his own bond does not render his acts void. 9 Neb. 10.

**SEC. 6.** Where an assignment contained a provision authorizing the assignee "to dispose of the same in any manner whatsoever as freely and lawfully as the assignor could do himself, which the said party of the second part, trustee as aforesaid may deem advisable to do, tending in his opinion to convert the same into money, for the benefit of all interested," it was held void, as authorizing a sale on credit, and an exchange of the property assigned for other property or notes, bonds, etc., 7 Neb. 21. But where the assignee was authorized to "sell and dispose of the property and generally convert the same into money, upon such terms and conditions as in his judgment may appear just and for the interest of all parties interested," it was held good. 9 Neb. 6. That the property cannot be applied at once to the payment of the debts will not invalidate the instrument, if the delay is such as necessarily results from a reasonable exercise of the power given to the trustee, and is not the result of the condition of the instrument. *Id.* 9 Neb. 46. An assignment of "all the lands, tenements, hereditaments, goods, chattels, property and choses in action, of every name, nature and description, wherever the same may be (except such property as is exempt by law from execution)" is not void on its face. 9 Neb. 40. A pro-

of creditors only who shall execute a release, shall be taken as a preference in favor of such creditors, and be void, and the assignment shall be held and construed to inure to the benefit of all the creditors in proportion to their respective demands.

Sec. 7. [**Assignment void if not recorded.**].—All assignments so made and executed as aforesaid, which shall not be recorded in the office for the recording of deeds in the county in which said assignor resides, and in the county in which real estate so assigned is situate, within thirty days after the execution thereof, shall be considered null and void, as against any of the creditors of said assignor, and subsequent *bona fide* purchasers without notice.

Sec. 8. [**Citation to assignee.**].—Whenever it shall be made to appear to the court having jurisdiction as aforesaid, or to the judge thereof during vacation, on the application of any person interested in the trust estate, that an assignee as aforesaid has neglected or refused to file a true and complete inventory, or give bond with surety as hereinbefore required, or to file the accounts of his trust as hereinafter required, or that such assignee is wasting, neglecting, or mismanaging the trust estate, or is in failing circumstances, or has removed, or is about to remove out of the jurisdiction of the court; in any such case it shall be lawful for such court, or the judge thereof, to allow a citation to issue to such assignee, requiring him to appear before the court, or judge thereof in vacation, at a time to be therein named, to show cause why he should not be dismissed from the trust.

Sec. 9. [**Additional security.**].—On the return of such citation, such assignee shall be required to give such other and further security as to the court, or the judge thereof, may think reasonable; or the court, or judge thereof, may at once dismiss such assignee from the trust.

Sec. 10. [**Same.**].—The like proceedings may be had whenever it shall be made to appear to such court, or judge thereof, that any person who shall have become surety for any assignee as aforesaid, in any bond, for the due execution of the trust, is in failing circumstances, or has removed, or is about to remove out of the state.

Sec. 11. [**Appointment of assignee by the court.**].—The district court, or judge thereof, having jurisdiction as aforesaid, shall have power to appoint assignees as aforesaid in the following cases, viz.: *First.* When any assignee, named in the voluntary assignment, shall refuse to act under or accept the trust. *Second.* When any such assignee shall die, or shall have been declared to be a lunatic or habitual drunkard, or be dismissed by the court from the trust, and such appointment may be made on the application of any person interested in the estate or property which is the subject of the trust.

Sec. 12. [**Duties of assignee.**].—Every assignee so appointed by the court, or judge thereof, shall be liable to the same duties, shall have the same powers and authorities in relation to the trust, or the further execution of the same, as the case may be, and shall be subject to the jurisdiction and control of the court, or judge thereof, in the same manner as his predecessor in the trust.

Sec. 13. [**Powers of the court.**].—Upon the appointment of any assignee as aforesaid, it shall be lawful for the court, or judge thereof, to order and direct all books, papers, moneys, and all the trust estate and effects whatsoever, to be forthwith delivered or transferred to such persons as the court, or judge, may appoint as aforesaid, upon security being given by such person as hereinbefore required, and such trust estate and effects shall forthwith pass to and be vested in such succeeding assignee.

vision in an assignment that an assignee may compromise choses in action when he deems it expedient, *held*, to give authority to compromise only doubtful claims. *Id.* A reservation to pay over to the assignor "the rest, residue and remainder, if any there be after paying said costs, charges, expenses and debts aforesaid" does not render an assignment void. *Id.* 7 Neb. 430.

Sec. 7. Deeds of assignment under this act must be acknowledged in same manner as deeds of real estate. 10 Neb. 514.

Sec. 8. The entire proceedings are under the control of the district court or judge thereof, and it is the duty of the court or judge, upon proper application, to see that the assignee properly discharges the duties of his trust. 9 Neb. 40. As to the remedy against an assignee, before the passage of this act, where he neglected to collect the assets and render them available, or to settle claims of creditors etc., see 9 Neb. 353.

**Sec. 14. [Same.]**—It shall be lawful for the court having jurisdiction as aforesaid, or the judge thereof in vacation, to make all such orders and decrees from time to time as may be necessary for carrying into effect any trust aforesaid, or for the distribution of moneys in the hands of such assignee, or for the settlement of the accounts of such assignee, or for the delivery or transfer of such trust estate and effects to the person appointed assignee by the court as aforesaid, and also to issue process for the appearance of persons amenable to its jurisdiction in such cases, and to compel obedience to its orders and decrees, and enforce the execution thereof. And the court shall allow such assignees such compensation out of the funds or effects in their hands for their services as shall be reasonable and just.

**Sec. 15. Accounts of assignees.]**—It shall be lawful for the said district court, or judge thereof during vacation, on application of any person interested in such trust estate, or any co-assignee, to issue a citation to any assignee for the benefit of creditors, whether appointed by voluntary assignment, or in pursuance of the provisions of this act requiring such assignee to appear in said court, or before said judge, and exhibit, under oath or affirmation, within a certain time to be named in such citation, a full and complete account of the management of the trust estate, and to perform such other acts or things as may be required by, or shall be consistent with, the duties of the trust; *Provided*, That no such citation shall be issued until after the expiration of one year from the date of the assignment to, or appointment of such assignee.

**Sec. 16. [Legal representative.]**—The legal representative of any such assignee may in like manner be cited to exhibit in court an account of the management of such trust estate of the assignee in his life-time.

**Sec. 17. [Settlement of accounts.]**—Such assignee aforesaid may, with leave of the court, or judge thereof, make a voluntary final settlement of his accounts or settlements of his accounts from time to time, so far as he may have executed the trust, and the same shall be filed in the office of the clerk of the court.

**Sec. 18. [Notice.]**—The court, or judge, shall, by general order, or by such order as the circumstances of any particular case may require, direct the clerk thereof, to give notice of the exhibition and filing of every account so filed as aforesaid, during such time and in such newspapers as the court shall direct, setting forth in such notice that the account will be allowed and confirmed at a certain time to be stated in such notice, unless cause be shown why the same should not be allowed. The expense of such publication shall be paid by the assignee at the time of filing such account, and shall be passed to his credit in such account.

**Sec. 19. [Exceptions—Reference.]**—On the filing of any accounts by any assignee or his legal representatives as aforesaid, it shall be lawful for any person interested in such trust estate to file in said court exceptions to such accounts, or to parts thereof, and thereupon the court, or judge, may refer the same to one or more referees, not exceeding three in number, who shall be sworn or affirmed, well and truly to audit and adjust, and re-state such accounts, and make report thereof, together with the proofs taken therein, to the court or judge; and upon the filing of such report, any person or persons interesting [ed] in such trust estate, may file exceptions to such report, or any part thereof, which exceptions shall be heard and determined by the court or judge thereof.

**Sec. 20. [Powers of referee.]**—The referee or referees so appointed shall have the same power to summon and enforce the attendance of witnesses before them, to administer oaths on the hearing of such case, to examine such assignee, upon oath, touching the execution of the trust, to compel the production of any books, papers, or other documents necessary to a just decision of any question before them, and to grant adjournments, as the court or judge, upon such hearing, might have. And depositions to be read in evidence on the hearing of such case, may be taken by any person interested in such trust estate, in the manner and under the rules prescribed by the code of civil procedure of this state for the taking of depositions.

**SEC. 21. [Statement of assignee—Settlement—Notice.]**—Such assignee or assignees aforesaid shall, every six months, file with the clerk of the district court in the county a full and complete statement of his or their doings in the premises, which statement shall be open to the inspection of any of the creditors of the trust or estate at all times, and the said assignee or assignees may, at their option, make a full and final settlement of their trust by giving notice in some newspaper published in said county, or if no such newspaper shall be published in said county, then in some newspaper having general circulation in said county, that he or they will appear in open court for the purpose of making such final settlement, and asking for a full and complete discharge from the trust aforesaid; and if upon examination of the statement of such assignee by the court, it shall appear that the trust or estate has been disposed of for the benefit of the creditors, the court, or judge thereof, shall enter or cause to be entered a full and complete discharge of the assignee or assignees, which shall forever release him or them from any further obligation in the premises, unless in case of fraud.

**SEC. 22. [Removal of assignee.]**—When any assignee shall remove out of the county in which he resided at the time of his appointment, or shall not possess real or personal property in such county sufficient to satisfy any order or decree made against him by the court of such county, or judge of said court, it shall be lawful for such court, or judge, to issue process to the county in which he may have real or personal estate amenable to such process, and such process shall be executed by the sheriff, or coroner, as the case may require, of the county of which such assignee may be, or may have real or personal property.

**SEC. 23. [Appeal.]**—Any assignee, or person interested in such trust estate, may appeal from the final order or decree of the district court, or judge, in any case relating to such assignee, or the settlement of their accounts, to the supreme court of the state, but such appeal shall be confined to the matters excepted to in the district court, or before said judge; and the person appealing shall, within thirty days from the rendition of such decree, or the making of such final order, file in the office of the clerk of the district court, a notice in writing of such appeal, and upon causing a minute thereof, and of the date thereof, to be made in the case upon the appearance docket of said court, the appeal shall be deemed properly taken.

**SEC. 24. [Transcript to be filed in supreme court.]**—The appellant shall, within six months after the date of the rendition or the making of such final order, procure from the clerk of the district court a certified transcript of the proceedings had in such case in the district court, containing the decree rendered, or final order made therein, and all the testimony and proofs relating to the subject matter excepted to as aforesaid, and have the said case properly docketed in the supreme court; and on failure thereof, the decree rendered, or final order made, in the district court, shall stand and be proceeded in as if no appeal had been taken.

**SEC. 25. [Assignments heretofore made.]**—In all cases of voluntary assignment heretofore made by any debtor for the benefit of his creditors, the assignee or assignees named in such voluntary assignment shall be subject to all the provisions of this act, and on application to said court, or judge thereof, by any person interested in such trust estate, said assignee or assignees may be required to give bond or bonds, with sufficient security, in manner and form provided in section three of this act.

## CHAPTER 7.—ATTORNEYS.

**SECTION 1. [Qualification for admission.]**—No person shall be admitted to practice as an attorney in the supreme and district courts of this state hereafter, unless such person shall have previously studied in the office of a

SECS. 1-14. Chap. III., R. S. 14; except sections 15-21, which were superseded by act relative to district attorneys. Chap. 5, G. S. 94. "An act to provide for the allowance and recovery of attorneys' fees in certain cases." Passed and taking effect Feb. 18, 1873, [G. S. 98.] was repealed, Laws 1879, 78. The repealing act

practicing attorney, for the period of two years, and pass a satisfactory examination upon the principles of the common law, under the direction of the court to which application is made, and it is shown to the satisfaction of said court that such applicant sustains a good moral character. [R. S. 14. G. S. 94.]

**SEC. 2. [Supreme court.]**—The supreme court may, on motion, admit any practicing attorney of the district court to practice in the supreme court, upon his taking the usual oath of office..

**SEC. 3. [From other states.]**—Any practicing attorney in the courts of record of another state or territory, having professional business in either the supreme or district courts, may, on motion, be admitted to practice in either of the courts, upon taking the oath as aforesaid.

**SEC. 4. [Oath.]**—Every attorney upon being admitted to practice in the supreme or district courts of this state, shall take and subscribe an oath substantially in the following form:

"You do solemnly swear that you will support the constitution of the United States, and the constitution of this state, and that you will faithfully discharge the duties of an attorney and counsellor, according to the best of your ability." [Amended 1871, 107.]

**SEC. 5. [General duties.]**—It is the duty of an attorney and counsellor—  
I. To maintain the respect due to the courts of justice and to judicial officers.  
II. To counsel or maintain no other actions, proceedings, defenses, than those which appear to him legal and just, except the defense of a person charged with a public offense. III. To employ, for the purpose of maintaining the cause confided to him, such means only as are consistent with truth. IV. To maintain inviolate the confidence, and at any peril to himself, to preserve the secrets of his clients. V. To abstain from all offensive practices, and to advise no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged. VI. Not to encourage the commencement or continuance of an action or proceeding from any motive of passion or interest.

**SEC. 6. [Deceit and collusion.]**—An attorney and counsellor who is guilty of deceit or collusion, and consents thereto, with intent to deceive a court, or judge, or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action.

**SEC. 7. [Powers.]**—An attorney or counsellor has power—I. To execute in the name of his client, a bond for an appeal, certiorari, writ of error, or any other paper necessary and proper for the prosecution of a suit already commenced. II. To bind his client by his agreement in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court. III. To receive money, claimed by his client in an action or proceeding, during the pendency thereof or afterwards, unless he has been previously discharged by his client, and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

took effect June 1, 1879. The original act was as follows: "SECTION 1. That in all actions brought for the foreclosure of a mortgage, or upon a written instrument for the payment of money only, there shall be allowed to the plaintiff upon a recovery of judgment by him, a sum to be fixed by the court, in addition to the judgment, not exceeding ten per cent., as an attorney's fee, in all cases wherein the mortgage or other written instrument upon which the action is brought, shall in express terms provide for the allowance of an attorney's fee." Under this act it was held that an attorney's fee was in the nature of costs and should be taxed as such, distinct from the judgment proper. 4 Neb. 189. 8 Neb. 10. Id. 48. In no case can such fee be recovered unless allowed by the court. Id. The allowance is subject to exceptions and review in like manner as the taxation of other costs may be. 6 Neb. 517. The repeal of the act takes away the right to recover attorneys' fees. *Dow v. Updyke*, 11 Neb. —.

**SEC. 7.** While a supersedeas bond for an appeal, duly approved, was on file in the district court, the appellee's attorney requested the clerk to issue execution, to which request the appellant's attorneys signed a waiver thus: "We hereby consent to the above request being complied with by the clerk of said court." *Held*, that their general employment as attorneys gave them no authority to sign such waiver, and the burden of proof was on them to show they had special authority to sign it. 8 Neb. 307.—Agreements relating to the conduct of a suit and its proceedings during trial, made by the attorneys in the case in open court and entered upon the record are binding upon the parties. 3 Neb. 29. But oral agreements made out of court will not be considered. 7 Neb. 205.

SEC. 8. [**Lien.**—An attorney has a lien for a general balance of compensation upon any papers of his client which have come into his possession in the course of his professional employment; upon money in his hands belonging to his client, and in the hands of the adverse party in an action or proceeding in which the attorney was employed from the time of giving notice of the lien to that party.

SEC. 9. [**Admission from other states.**—Any person producing a license, or other satisfactory voucher, proving that he has been regularly admitted an attorney at law, in any court of record within the United States, that he is of good moral character, may be licensed and permitted to practice as a counsellor and attorney at law in any court in this state without examination.

SEC. 10. [**Parties may act.**—Plaintiffs shall have the liberty of prosecuting, and defendants shall have the liberty of defending in their proper persons; and nothing herein contained shall be so construed as to affect any person or persons heretofore admitted to the degree of an attorney or counsellor at law, by the laws of this state, so as to subject them to further examination, or make it necessary for them to renew their license.

SEC. 11. [**Who not admitted to practice.**—No person shall be permitted to practice as an attorney of the courts of this state, who holds a commission as supreme or district judge, or sheriff, clerk, constable, or jailer, in the county where they hold their respective offices, or clerk of the supreme or district courts of the state; *Provided*, That where an attorney-at-law or any other person holds the office of county judge or justice of the peace, he shall not be permitted to practice as such attorney on any matter brought before himself, or appealed from his decision to a higher court; and any violation of this section shall be deemed a misdemeanor, and subject any such officer to fine, not less than five and not more than twenty-five dollars. [Amended 1877. 39.]

SEC. 12. [**Liability.**—When an attorney, residing and practicing in any state or territory, receives money upon demands left with him for collection in such state or territory, which he omits to pay over, he is liable to arrest here in an action brought to recover the money.

SEC. 13. [**Original papers.**—Upon filing original papers in any case, it shall be his duty to indorse thereon his name.

SEC. 14. [**Shall act as guardian.**—It shall be the duty of every attorney to act as the guardian of an infant defendant in any suit pending against him, when appointed for that purpose by an order of the court; shall prepare himself to make the proper defense, to guard the rights of such defendant, and shall be entitled to such compensation as the court shall deem reasonable.

#### DISTRICT ATTORNEYS.

SEC. 15. [**Duties.**—It shall be the duty of the district attorney, of each judicial district, to appear in the district court, at each term of the same, in each county in the judicial district for which he was elected, and prosecute and defend all actions, civil and criminal, and all matters whatsoever in which the state or county may be interested. When possible he shall also appear before any justice of the peace or other officer exercising judicial functions in the district, and prosecute in cases of preliminary examinations of offenders against the laws of the state. [1867 § 2, 48. G. S. 96.]

SEC. 16. [**Advice to officers.**—The district attorney shall without fee or reward give opinions and advice to the board of county commissioners of any

SEC. 8. The lien of an attorney on the judgment to the extent of his reasonable fees and disbursements is paramount to any right of the parties in the suit or to any set off. 3 Neb. 181. 5 Neb. 487. And when a defendant has notice of the lien he cannot evade the payment of the sum actually due on such lien by payment to the creditor of the judgment. 5 Neb. 487. But where attorneys have rendered service in a case, but filed no notice of a lien, the mere assignment of their account to parties claiming a lien will not authorize the latter to enforce such claim against the debtor. The right to a lien is restricted to the claim set forth in the notice. *Id.* The attorney may be admitted as a party plaintiff for the purpose of enforcing the lien. 10 Neb. 580. *Ex. s. 15-21.* "An act to provide for the election of district attorneys and to define their duties." Laws 1867, 48. Took effect June 11, 1867. Section 1 of this act being repealed by election law and sec. 8 by chapter 10, are omitted.

county in the district, and other officers of the state or county, upon all matters in which the state or county is a party or may be interested. [Id. § 3.]

SEC. 17. [Shall not receive fee or reward, etc.]—The district attorney shall not receive any fee or reward from, or on behalf of any prosecutor or other individual for services in any prosecution or business to which it shall be his duty to attend, nor be concerned as an attorney or counsellor for any party, other than the state or county, in any action depending upon the same state of facts, upon which any prosecution commenced but undetermined shall depend; nor shall any district attorney while in office, be eligible to, or hold any judicial office whatever. [Id. § 4.]

SEC. 18. [Deputies.]—The district attorney may, in his discretion, appoint one or more deputies, for whose official acts, and fees, he shall at all times be responsible. [Id. § 5.]

SEC. 19. [Vacancy.]—In case of a vacancy in the office of district attorney, the governor of the state shall appoint some proper person to fill such vacancy until the next general election for state officers thereafter, and until his successor shall be elected and qualified. When the district attorney or his deputy shall be absent from court when his services are required, the court may appoint a district attorney for the time being, who shall possess all the powers and perform all the duties and shall be entitled to receive the same fees as the district attorney until such district attorney shall appear in court; *Provided*, That if the district attorney is absent on other than business pertaining to the duties of his office, the fees paid to such appointed district attorney shall be deducted from the salary of the district attorney. [Amended 1869, 89.]

SEC. 20. [Duties before grand jury.]—It shall be the duty of the district attorney, whenever required by the grand jury, to appear before them and examine witnesses. He shall also draw and sign all indictments and other pleadings in which it shall be his duty to appear. [Id. § 7.]

SEC. 21. [Salary.]—The district attorney shall receive for his services a salary of fifteen hundred dollars per annum, which shall be paid quarterly upon the certificate of the judge of the judicial district to the auditor, who shall draw his warrant upon the treasurer of the state, for the amount so certified by the judge of the district. [Id. § 9.]

## CHAPTER 8.—BANKS.

SECTION 1. [Report to auditor.]—Every bank, banking company, savings bank, and every corporation, firm or individual, engaged in banking or in carrying on the business of receiving money on deposit, buying and selling exchange, gold, silver, coin, bullion, uncurrent money, bonds of the United States, bonds of the state of Nebraska, and of the cities, counties, and school districts of said state; and every person, firm and corporation engaged in a general brokerage, loaning, or money deposit business, doing business in the state of Nebraska, shall annually, in the month of December, make report under oath to the auditor of public accounts of the state, of their condition, resources and liabilities. [1877 § 1, 204.]

SEC. 2. [Same—Contents.]—Every such report, verified by the oath of the president, cashier, partner, member, stockholder, or business manager of the bank, corporation, firm or individual doing business as aforesaid, shall contain a brief statement of its actual financial condition at the date of such report, the amount and kind of its property, and the nature and extent of its debts and liabilities; and said report shall be filed in the office of the auditor of public accounts on or before the last day of December of each year, and recorded by said auditor in a book provided for that purpose. [Id. § 2.]

SEC. 3. [False report—Penalty.]—Every bank, corporation, firm or indi-

SEC. 18. Counties are not liable for pay of deputy district attorney. 10 Neb. 194.

SEC. 19. As to method and time of filling vacancies, see sections 103, 107, chapter 26, passed subsequent to this section.

SECS. 1-3. "An act to require banks and banking institutions to make an annual report of their resources and liabilities to the auditor of public accounts." Laws 1877, 204. Took effect June 1, 1877.

vidual, who shall fail or neglect to make the report required by this act, or who shall wilfully make a false report, shall forfeit to the state the sum of five hundred dollars, to be recovered in a civil action. [Id. § 8.]

**SEC. 4. [Actions to recover public money loaned.]**—That in all cases in which public moneys, or other funds belonging to the state, or to any county, school district, city or municipality thereof, have been deposited or loaned to any person or persons, corporations, bank, co-partnership, or other firm or association of persons, it shall be lawful for the officer or officers making such deposit or loan, or his or their successors in office, to maintain an action or actions for the recovery of such moneys deposited or loaned, and all contracts for the security or payment of any such moneys or public funds made shall be held to be good and lawful contracts, binding on all parties thereto: *Provided*, Nothing herein contained shall be construed to in any manner affect the liability of any surety or signers of any official bond heretofore or hereafter given or made in this state. [1879 § 1, 156.]

**SEC. 5. [Same—Pending actions.]**—All actions heretofore brought by any public officer, either in his own name or officially, for the recovery of any public moneys heretofore loaned or deposited shall be sustained, and all remedies allowed in other cases, by attachment or otherwise, shall be admissible and allowed in such actions as in other cases. [Id. § 2.]

## CHAPTER 9.—BONDS—MUNICIPAL.

### STATE FISCAL AGENCY.

**SECTION 1. [Designation of agency by governor.]**—The governor is hereby authorized to designate some bank in the city of New York, as the state agency for the payment of bonds and coupons issued by the state or any county, township, precinct, city or school district, which are by their terms made payable in said city. [1875 § 1, 163.]

**SEC. 2. [Bond of agency.]**—Before establishing and designating such agency, the governor shall require such agency to give a bond in double the amount of moneys which said agency may have in its custody at any time, such bond to be approved by the governor and auditor, and filed in the office of secretary of state. [Id. § 2.]

**SEC. 3. [Payments, how made—Commissions.]**—The state treasurer, and such other officers as are by law designated for the purpose, are required to remit to the state agency, at least ten days before the day of maturity of any bonds or coupons payable in New York city, sufficient moneys out of the tax collected for the purpose, for the redemption of such bonds and coupons, and in addition thereto, a commission not exceeding one-eighth of one per cent. for the disbursement of the same, and all expenses for such commissions, exchange, and postage, shall be a proper charge against the state, county, city, township, precinct or school district, for which such moneys are remitted, and shall be allowed the treasurer in his settlement. [Id. § 3.]

**SEC. 4. [Same—Notify officers of money received.]**—On the receipt of any funds by the state agency it shall be the duty of such agency to notify the officer from whom received, of the receipt thereof; and immediately on the payment of such bonds or coupons for which funds were remitted, said coupons or bonds shall be cancelled, and returned to the officer from whom such funds were received. [Id., § 4.]

**SEC. 5. [Same—Bonds payable at.]**—It shall be the duty of the state

SECS. 4-5. "An act to provide for the collection of public funds and moneys," Laws 1879, 156. Took effect February 24, 1879. See 8 Neb. 67.

SECS. 1-5. "An act to provide for the establishment of a fiscal agency for the state of Nebraska, in the city of New York, and prescribing the duties of officers in relation thereto." Laws 1875, 163. Took effect February 25, 1875.

NOTE.—See also cities of the first-class, cities of the second-class, counties and county officers, internal improvements, revenue, and schools. All acts of a special nature relating to this subject and applicable to particular cities, counties and school districts, are omitted from this volume.



auditor, immediately after the passage of this act, and the establishment of the agency provided herein, to publish a notice of the same, in some paper of general circulation in the city of New York for two weeks, and thereafter, all bonds and coupons of the state, or any county, city, township, precinct or school district in the state, which are by their terms payable at any particular bank in said city, shall be paid at such agency. [Id. § 5.]

#### REGISTRATION OF PRECINCT BONDS.

**SEC. 6. [Precinct and school district bonds—Record by county clerk.]**—From and after the passage of this law, it shall be the duty of precinct or township and school district boards or officers, after having first filed for record with the county clerk, the question of submission, notice, and proof of publication, return of votes for and against, to register with the county clerk all precinct or township and school district bonds voted and issued pursuant to the following act and sections of an act: "An act to enable counties, cities, and precincts to borrow money on their bonds, or to issue bonds in aid of works of internal improvement in this state, and to legalize bonds already issued for such purposes." Approved February 15, 1869; and amendments thereto approved March 8, 1870. And sections 30, 31, and 32, of "An act to establish a system of public instruction for the state of Nebraska," approved February 15, 1869. [G. S. § 1, 883.]

**SEC. 7. [Fees.]**—It shall be the duty of the county clerk, in a book prepared for that purpose, to record the question of submission, notice and proof of publication, return of votes for and against; and the fee for so doing, to be paid by the precinct or township, or school district board, or officers, as the case may be, shall be the same as charged for the recording of deeds and mortgages. [Id. § 2.]

**SEC. 8. [Registration—Fees.]**—It shall be the duty of the county clerk, on presentation of any precinct or township, or school district bonds for registry, to register the same in a book prepared for that purpose, which register shall contain, *First.* The number, or name of the precinct or township, or school district. *Second.* The number of the bond. *Third.* The date of the bond. *Fourth.* To whom payable. *Fifth.* Where payable. *Sixth.* When due. *Seventh.* When interest is due. *Eighth.* Amount of bond. *Ninth.* Reference by page to the book provided for in section two, giving history of the bond. The county clerk shall receive a fee of twenty-five cents for every bond so registered. [Id. § 3.]

**SEC. 9. [Duties of officers.]**—It shall be the duty of all precinct or township, and school district boards, or officers, immediately after the passage of this act, to furnish the county clerks of their respective counties, with a statement of the amount of bonds heretofore issued by their precincts, townships, or school districts and not already paid, the date of each bond, when, where, and to whom payable, the amount, the rate of interest, and when and where it is payable; which bonds shall be registered by the county clerk, in conformity with section three of this act; and the fee for registering under this section shall be twenty-five cents for each bond. [Id. § 4.]

#### REGISTRATION AND REDEMPTION OF COUNTY BONDS.

**SEC. 10. [Registration by county officers.]**—That the officers of any county in this state, issuing bonds, shall make registration in a book kept for that purpose, of the notice of election, manner and time of publication, questions of submission, and adoption of the proposition on account of which such bonds were issued; also of the date, amount, number, maturity, when payable, and where paya-

SECS 6-9. "An act to provide for the registration of precinct or township and school district bonds." G. S. 883. Cited 7 Neb. 497. Took effect Feb. 27, 1873. The provisions of this act applicable to school district bonds were repealed by Laws 1879, 175. See section 19, subdivision XV, chapter 79, post. See chapter 45.

SEC. 9. The amendment to this section made Feb. 25, 1875, Laws 1875, 185 was held unconstitutional, 9 Neb. 509, and is omitted. The substance of it was re-enacted in 1879 and appears in § 13, subdivision XV, chapter 79. The act entitled, "An act to declare the true intent and meaning of the expression 'school district' [1877, 64] in the amendatory section [1875 § 1, 185] was also re-enacted in 1879 and appears in same subdivision.

SECS. 10-19. "An act to authorize the registration, collection and redemption of county bonds." Laws 1875, 169. Took effect Feb. 25, 1875.

ble and the rate of interest, and when and where payable, of such bonds; and shall, at the time of issuing the same, make out and transmit to the auditor of state, a certified statement of such registry, which shall be attested by the county clerk, under his official seal. Then the auditor of state, upon the receipt of such statement, shall, in a book kept by him for that purpose, make a faithful record of the same. [1875 § 1, 169.]

**SEC. 11. [Statement of bonded indebtedness.]**—It shall be the duty of the clerk of each county in this state, within sixty days from the taking effect of this act, and at such other times as the auditor of state may request, to make out, certify and transmit to such auditor, a full and complete statement of the bonded indebtedness of every description, of such county, at the date of such statement, particularly setting forth the nature of such bonds, and for what the same were issued, which shall be entered of record by the auditor of state, in the same manner as provided for in section one of this act. The county clerk shall receive the same compensation for his service rendered under the provision of section one and two of this act, as are allowed by law for a copy of like records, to be paid by said county. [Id. § 2.]

**SEC. 12. [County bonds—Registration by auditor.]**—Whenever the holder of county bonds shall present the same to the auditor of the state for registration, the auditor, upon being satisfied that such bonds have been issued according to law, shall register the same in his office, in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same, and shall, under his seal of office, certify upon such bonds the fact that they have been regularly and legally issued, and that such bonds have been registered in his office in accordance with the provisions of this act, for which registration and certificate the auditor shall be entitled to a fee of one-fourth of one per cent. upon the dollar for each bond so registered, to be paid by the holder thereof, the data filed in this office being the basis of such certificate. [Id. § 3.]

**SEC. 13. [Auditor's certificate to clerk.]**—When bonds of any county shall be so registered, the auditor of state shall, annually, on or before the second Monday of June in each year, ascertain the amount of sinking fund and interest accrued, and to accrue before the tax for the next succeeding year shall be levied, upon all bonds registered in his office, and shall certify the amount thereof to the clerk of the county in which such bonds were issued, specifically setting forth the amount thus due, and to become due for such year. [Id. § 4.]

**SEC. 14. [County bonds—Taxes to pay.]**—The clerk and recorder of any county, upon receiving such certified statement from the auditor of state, shall proceed to ascertain from the assessment roll of the county, the amount of taxable property in such county, and what per centage is required to be levied thereon to pay the said interest and to create a sinking fund, in compliance with the certificate of said auditor; and when so ascertained, shall levy such per centage upon the taxable property of such county, and shall place the same upon the tax roll of the county, in a separate column or columns designating the purposes for which said taxes are levied, and the said taxes shall be collected by the county treasurer in the same manner that other taxes are collected. [Id. § 5.]

**SEC. 15. [Payment—Investment—Sinking fund.]**—Upon the receipt of such moneys by the county treasurer, he shall, out of the same, at once proceed to pay off the interest accrued upon such registered bonds, at the place where such interest is made payable. The county treasurer shall cause to be surrendered the coupons for all interest thus paid, which coupons shall be filed with and cancelled by the county clerk, and his receipt taken therefor and retained by said treasurer. The moneys thus collected and remaining in the hands of the

SECS. 13, 14. These provisions are mandatory, and the authority to ascertain the amount of interest to be paid and to create a sinking fund to redeem bonds registered under this act is vested alone in the state auditor who must certify the proper amount to the county clerk, whose duty it becomes to levy and extend the tax on the tax list. No authority exists for commissioners to make such levy. 7 Neb. 492. But see section 77, chapter entitled Revenue, passed subsequent to these sections and secs. 20-22 this chapter.

county treasurer, after the payment of the said interest as herein provided except a sufficient amount to pay the accruing interest upon such bonds for the current year, shall be retained as a sinking fund for the final redemption of such bonds, and shall be, by the county treasurer, when so ordered by the county commissioners, invested as follows, to wit: *First*, in redeeming the bonds of the county issuing the same; *Second*, in the bonds of the state of Nebraska; *Third*, in the bonds of the United States, provided that the bonds thus purchased, shall in all cases be purchased at the lowest market price, after twenty days notice by publication in at least one newspaper published and in general circulation at the capital city or town of the state; the cost of which advertising at legal rates, shall be paid out of the sinking fund for the redemption of such bonds. [Id. § 6.]

**SEC. 16. [Payment, when and how made.]**—When the interest and principal, or interest only, of such registered bonds are payable in New York city, or elsewhere, out of the state, payment shall be then made at the place so designated in such bond or coupon, or at the financial agency of the state for such purposes, and in order that the funds may not be misapplied, the county treasurer shall procure a draft for the amount, to be transmitted by drawing his check on some bank in this state, and both check and draft shall be so endorsed as to show upon what bond or bonds the funds shall be applied; or at the request of the party holding or owning said bonds, payment may be made at the office of said treasurer. [Id. § 7.]

**SEC. 17. [Liability of treasurer.]**—The tax and funds so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for, until fully satisfied, and the county treasurer shall be liable on his official bond, for the faithful disbursements of all moneys so collected or received by him. [Id. § 8.]

**SEC. 18. [Cancellation—Treasurer's fee for payment.]**—That when any registered bonds shall mature, the same shall be paid off by the county treasurer, at the place where the same are payable, out of any money in his hands or under his control for that purpose, and when so paid the same shall be endorsed by the county treasurer on the face thereof, "Cancelled," together with the date of such payment; and thereupon be filed with the county clerk, who shall enter satisfaction of such bonds in the record where the same are registered. In case said bonds are payable out of the state, an allowance of one-fourth of one per cent. shall be made to the county treasurer for the expense attendant in making such payment, to be deducted from any money in his hands remaining after payment of such matured bonds. [Id. § 9.]

**SEC. 19. [Published statement by officers.]**—The county treasurer and county clerk shall, when ordered by the county commissioners, publish a detailed statement of the business transacted by them under the provisions of this act. [Id. § 10.]

#### REGISTRATION OF BONDS VOTED BUT NOT ISSUED.

**SEC. 20. [Statement to be made before issuance of bonds.]**—It shall be the duty of the proper officers of any county, township, precinct, city or school district in which any bonds, issued for work of internal improvement, have been heretofore voted under the authority of any law of this state, before the issuance of such bonds, to make a written statement of all proceedings relative to the vote upon the issuance of such bonds, the notice of the election, manner and time of publication, questions of submission, results of a canvass of the vote on the proposition on account of which it is proposed to issue such bonds, together with a full statement of the assessed valuation and total bonded indebtedness of the county, as well as the assessed valuation and total bonded indebtedness of the township, precinct, city or school district voting such bonds. Such statement shall be certified to under oath, by the proper board or city council, and be transmitted with the bonds proposed to be issued to the auditor of public accounts. [1879 § 1, 177.]

SECS. 20-22. "An act to provide for the registration of county, precinct, city or school district bonds heretofore voted but not issued." Laws 1879, 177. Took effect June 1, 1879.

**SEC. 21. [Duties of auditor.]**—The auditor shall examine the statement and bonds so submitted to him, and if he be satisfied that such bonds have been voted in conformity to law, and are in all respects in due form, he shall record the statement and register the bonds in his office, and no such bonds shall be issued or be valid unless they shall be so registered and have endorsed thereon a certificate of said auditor and secretary of state, showing that such bonds are issued pursuant to law, the data filed in the office of said auditor being the basis of such certificate. [Id. § 2.]

**SEC. 22. [Registration—Taxes.]**—Upon the registration of such bonds aforesaid, the auditor of public accounts shall certify the fact to the proper officers of such county, city, township or school, or school district, whose duty it shall be to enter the same upon the records of the county, city or township, as the case may be, and taxes for the payment of such bonds and the interest thereon shall be levied in the manner provided by law. [Id. § 3.]

## CHAPTER 10.—BONDS AND OATHS—OFFICIAL.

**SECTION 1. [Oath.]**—All state, district, county, precinct, township, municipal and especially appointed officers, except those mentioned in section one, article 14, of the Constitution, shall, before entering upon their respective duties, take and subscribe the following oath, which shall be endorsed upon their respective bonds:

"I do solemnly swear that I will support the constitution of the United States, the constitution of the state of Nebraska, and faithfully and impartially perform the duties of the office of —, according to law, and to the best of my ability. So help me God."

If any such officer is not required to give bond, the oath shall be filed in the office of the secretary of state or of the clerk of the county, city, village or other municipal subdivision of which he shall be an officer. [1881 § 1, chap. 14.]

**SEC. 2. [Form—Obligee.]**—All official bond of state officers must be in form, joint and several, and made payable to the state of Nebraska in such penalty and with such conditions as required by this act or the law creating or regulating the office.

**SEC. 3. [Same—Bonds of county officers.]**—All official bonds of county, township, school district and precinct officers must be in form, joint and several, and made payable to the county in which the officer giving the same shall be elected or appointed, in such penalty and with such conditions as required by this act, or the law creating or regulating the duties of the office.

**SEC. 4. [Bonds of city and village officers.]**—All official bonds of officers of cities, towns and villages, shall be in all respects as required by the last preceding section, except that they shall be made payable to the city, town or village, in and for which the officers giving the same shall be elected or appointed, in such penalty as the city, town or village council or trustees may fix.

**SEC. 5. [Bonds filed when.]**—Official bonds, with the oath endorsed thereon, shall be filed in the proper office within the times as follows: Of all officers elected at any general election on or before the first Thursday after the first Tuesday in January next, succeeding the election; of all appointed officers within thirty days after their appointment; of officers elected at any special election, and city and village officers, within thirty days after the canvass of the votes of the election at which they were chosen.

**SEC. 6. [Approval of bonds of state officers.]**—The official bonds of all state and district officers except governor shall be approved by the governor, and filed and recorded in the office of the secretary of state. The official bond of the governor shall be approved by the chief justice of the supreme court. The official bond of the secretary of state shall be filed and recorded in the office of the auditor of public accounts.

NOTE.—"An act concerning official bonds and oaths." Approved, and took effect Feb. 18, 1881. For decision under the old law, G. S. 99, and relative to official bonds generally, see 1 Neb. 199. 4 Id. 564. 5 Id. 105. 6 Id. 531. 8 Id. 344. 9 Id. 237, 429. 10 Id. 293, 406, 433, 484, 524.

**SEC. 7. [Approval of bonds of county officers.]**—The official bonds of all county, precinct, and township officers shall be approved by the county board: *Provided*, The official bonds of the county commissioners or supervisors shall be approved by the county judge. The bonds of notary public shall be approved by the county clerk. All such bonds shall be filed and recorded in the office of the county clerk, except the bonds of the county clerk and the members of the county board, which shall be filed and recorded in the office of the county judge. The official bond of school district treasurer must be approved by the director and moderator and filed in the office of the clerk of the county.

**SEC. 8. [Bonds of state officers.]**—All official bonds of state officers shall be executed by the principal named in such bonds, with at least three sureties, who shall be residents of the state, and worth in the aggregate the amount named in such bond over and above their present indebtedness, and affidavits of the sureties showing the value of property owned by each, and subject to levy and sale upon execution in this state, shall be made and filed with the officer approving such bond.

**SEC. 9. [Bonds of county and other officers.]**—All official bonds of county, precinct, and other officers, shall be executed by the principal named in such bonds, and at least two sufficient sureties who shall be freeholders of the county in which such bonds are given.

**SEC. 10. [Record of bonds.]**—The officers with whom any official bonds are required by law to be filed, shall carefully record and preserve the same in their respective offices, and shall give certified copies thereof, when required under the seal of their office, and shall be entitled to receive for the same, the usual fee allowed by law for certified copies of records in other cases.

**SEC. 11. [Approval.]**—The approval of each official bond shall be endorsed upon such bond by the officer approving the same, and no bond shall be filed and recorded until so approved.

**SEC. 12. [Obligation of bonds.]**—All official bonds shall be obligatory upon the principal and sureties, for the faithful discharge of all duties required by law of such principal, for the use of any persons injured by a breach of the condition of such bonds.

**SEC. 13. [Not void for informality.]**—No official bond shall be rendered void by reason of any informality or irregularity in its execution or approval.

**SEC. 14. [Officers and attorneys not taken as sureties.]**—No state or county officer, or their deputies, shall be taken as security on the bond of any administrator, executor, or other officer, from whom by law bond is or may be required, and no practicing attorney shall be taken as surety on any official bond, or bond in any legal proceedings in the district in which he may reside.

**SEC. 15. [Neglect to give bond.]**—If any person elected or appointed to any office shall neglect to have his official bond executed and approved as provided by law, and filed for record within the time limited by this act, his office shall thereupon *ipso facto* become vacant, and such vacancy shall thereupon immediately be filled by election or appointment as the law may direct in other cases of vacancy in the same office.

**SEC. 16. [Persons filling vacancy.]**—Any person appointed to fill a vacancy, before entering upon the duties of the office must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.

**SEC. 17. [Re-election of officers—New bond.]**—When the incumbent of an office is re-elected or re-appointed he shall qualify by taking the oath and giving the bond as above directed; but when such officer has had public funds or property in his control, his bond shall not be approved until he has produced and fully accounted for such funds and property; and when it is ascertained that the incumbent of an office holds over by reason of the non-election or

non-appointment of a successor, or of the neglect or refusal of the successor to qualify, he shall qualify anew within ten days from the time at which his successor, if elected, should have qualified.

**Sec. 18. [Sureties].**—No person shall be surety for the same officer for more than two successive terms of the same office.

**Sec. 19. [Penalties in bonds].**—The following named officers shall give bonds with penalties of the following amounts, to wit: The governor \$50,000. The lieutenant-governor \$50,000. The auditor of public accounts \$50,000. The secretary of state \$50,000. The attorney general \$50,000. The commissioner of public lands and buildings \$50,000. The state treasurer not less than \$600,000 and not less than double the amount of money that may come into his hands to be fixed by the governor. The superintendent of public instruction \$50,000. The reporter of the supreme court \$10,000. The private secretary of the governor \$10,000. The deputy auditor \$10,000. The deputy secretary of state \$10,000. The deputy state treasurer \$50,000. The deputy commissioner of public lands and buildings \$10,000. The state librarian \$10,000. The warden of the penitentiary \$10,000. The deputy warden \$5,000. The superintendent of the insane hospital \$10,000. The assistant superintendent \$5,000. The steward \$5,000. The principal of the blind asylum \$10,000. The principal of the deaf and dumb asylum \$10,000. The superintendent of the reform school \$10,000. The secretary of the board of regents of the state university \$10,000. Each clerk of the district court not less than \$5,000 or more than \$10,000 to be determined by the county board. Each district attorney \$5,000. Each county clerk not less than \$5,000 or more than \$10,000 to be determined by the county board. Each county treasurer not less than \$10,000 and not less than double the amount of money that may come into his hands, to be fixed by the county board. Each county judge in counties having less than 6,000 inhabitants \$5,000, over 6,000 and less than 20,000 inhabitants \$10,000, over 20,000 inhabitants \$50,000. Each sheriff in counties of less than 6,000 inhabitants \$5,000 and over 6,000 inhabitants \$10,000. Each county superintendent of public instruction \$3,000. Each county surveyor \$500. Each county commissioner or supervisor when the population does not exceed 10,000, \$5,000, when the population does not exceed 15,000, \$10,000, when the population exceeds 20,000, \$15,000. Each county coroner \$5,000. Each constable \$1,000. Each justice of the peace \$500. Each township clerk \$500. Each township treasurer \$5,000. Each assessor \$500. Each school district treasurer \$500 or not less than double the amount that may come into his hands, the amount to be fixed by the director and moderator of the district. Each notary public \$2,000. Each road overseer \$500.

**Sec. 20. [Officers not mentioned—Deputies].**—Officers not enumerated in the preceding section, and who are or may be required to give bonds, shall give the same in such penalty as may be provided by law or fixed by the board of officers empowered to fix the same. Deputies shall, except as otherwise specially provided, give bonds in the same manner and for the same sum as their principals.

**Sec. 21. [Responsibility of officers].**—Any officer or person who is intrusted with funds belonging to the state or any county thereof, which may come into his possession by any appropriation or otherwise, shall be responsible for the same upon his bond, and when any officer or person is intrusted with any such funds, and there is no provision of law requiring him to give a bond in a certain specified sum, he shall give bond in double the amount of the sum so intrusted to him, which in the case of state funds, shall be approved by the chief justice of the supreme court, and deposited in the office of the secretary of state; and in case of county funds, such bond shall be approved by the county commissioners and deposited in the county clerk's office. And no warrant shall be issued, or money paid over to such officer or person until said bond is filed as herein provided. The county commissioners of any one of the counties of this state may require the county treasurer to give additional freehold sureties whenever in the opinion of a

majority of law [said] commissioners the existing security shall become insufficient, and said commissioners are hereby also authorized and empowered to demand and receive from said county treasurer an additional bond as required by law, with good and sufficient freehold security in such sum as said commissioners or a majority of them may direct, whenever in their opinion more money shall have passed or is about to pass into the hands of said treasurer than is or would be recovered by the penalty in the previous bond, and if any county treasurer shall fail or refuse to give such additional security or bond for and during the time of ten days from and after the day on which said commissioners shall have required said treasurer so to do his office shall be considered vacant, and another treasurer shall be appointed agreeably to the provisions of law.

**SEC. 22. [Act applies to receivers, etc.]**—The provisions of this act, except as otherwise provided by law, apply to the bonds of receivers, executors, administrators, and guardians.

**SEC. 23. [Acts repealed.]**—"An act concerning official bonds and oaths," approved February 19, 1873; sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, chapter 5 Revised Statutes of 1866, entitled "Bonds;" sections 3 and 4, chapter 37, Revised Statutes of 1866, sections one and two of "An act to define the duties of secretary of state," approved February 15, 1877; sections 9 and 10 of "An act to provide for the election of an attorney general," approved February 15, 1869; section 1 of "An act defining the duties of the commissioners of public lands and buildings," approved February 19, 1877; "An act to amend section 8, chapter 5, of the Revised Statutes," approved February 15, 1869; section 89 of "An act to establish a system of public instruction for the state of Nebraska," approved February 15, 1869; section 9 of "An act regulating the state library," approved March 3, 1871; section 8 of "An act to provide for the election of district attorneys and to define their duties," approved June 11, 1867; section 36 of "An act concerning the organization, powers and jurisdiction of probate courts," approved March 3, 1873; section 15 of "An act for the government of the hospital for the insane," approved March 3, 1873; section 30 of "An act to provide for the erection of a penitentiary, and for the care and custody of state convicts," approved March 4, 1870; section 10 of "An act to erect and maintain an institution for the blind," approved February 19, 1875; and all acts and parts of acts inconsistent herewith are hereby repealed; *Provided*, That such repeal shall not operate as a release of any officer or his sureties from liability incurred on any official bond heretofore given by him.

**SEC. 24. [Act applies to those in office.]**—The provisions of this act shall apply to all officers now holding office, except that such officers shall not be required to qualify anew or file new bonds. And the principal and sureties on any bond heretofore given, and otherwise regular and valid, shall be liable for any breach of the conditions of such bond, although there were no provisions of law requiring the execution of a bond by such principal, or affixing a penalty therein.

**SEC. 25. [Emergency clause. Act took effect Feb. 28, 1881.]**

#### CHAPTER 11.—CENSUS.

**SECTION 1. [Duties of county commissioners.]**—That the county commissioners of every county in the state are hereby empowered and required to cause the assessors in every precinct in their respective counties to make a careful enumeration of the total number of persons residing in the several precincts of said counties in each year. [1869, 71. G. S. 101.]

**SEC. 2. [Return of births and deaths.]**—The county commissioners shall also require the assessors in the several precincts in their respective counties to make full and complete return of all births and deaths occurring in the preceding year, within their respective precincts in said counties.

**SEC. 3. [Forms to be furnished.]**—The county commissioners shall fur-

NOTE. "An act to provide for the enumeration of the population and registration of the births and deaths of the state of Nebraska." Laws 1869, 71. Chap. 7, G. S. 101. Took effect Feb. 12, 1869.













**Sec. 5. [Return to county clerk.]**—It shall be the duty of the assessors to enter the nativity of all persons enumerated in the foregoing tables and to keep a correct record of all cases of insanity and idiocy, noting as nearly as practicable the degree of either in every case, of which they shall make a return to the county clerk, together with all the other returns of "number of inhabitants," and "number of deaths," as indicated on the tables accompanying and forming a part of this act. These returns shall be made to the county clerk on or before the third Monday of April in each year.

**Sec. 6. [Returns tabulated.]**—As soon as practicable after the returns are received by the county clerk, and not later than the first Monday in May next ensuing, he shall tabulate the returns of the precinct assessors by precincts, giving the aggregates and grand totals for his entire county by a recapitulation of those of each precinct in his county, and forward the same to the secretary of state.

**Sec. 7. [Returns consolidated.]**—On or before the first Monday in June ensuing of each year, the secretary of state will cause the returns provided for in this act to be consolidated by precincts and by counties, giving the aggregates and grand totals of each precinct and each county, and he shall cause a recapitulation of the grand aggregates and grand totals throughout the state to be made out in a careful manner. The secretary of state will also cause the ratio of deaths in each one thousand persons to be ascertained; and will also cause the ratio of deaths from each cause to the total deaths from all causes in each age to be ascertained, and for the purpose of facilitating his labors in carrying out the provision of this act, he is hereby authorized by and with the consent and advice of the governor of this state, to employ any competent physician to aid and assist in perfecting the returns contemplated in this act; *Provided*, however, that no greater amount is paid to any physician, so employed, than the sum of three hundred dollars.

**Sec. 8. [Report of secretary of state.]**—The secretary of state will report to the legislature, in the first week of its regular session, full and complete returns of the enumeration of inhabitants, registration of births, and registration of deaths, as provided for in this act for each year preceding, between the regular sessions of the legislature, and to enable him to do so, he is authorized, hereby, to have the said returns printed in pamphlet form; the same to be paid for out of any moneys not otherwise appropriated.

**Sec. 9. [Penalty.]**—It shall be unlawful for any person or persons in the state of Nebraska, to render any false statement to the registration officers provided for in this act, and the concealment of a birth, or the concealment of a death, shall be considered a penal offense against the commonwealth, and be punishable by fine, or imprisonment in the county jail for a term not to exceed one year; *Provided*, That nothing in this section shall be so construed as to prevent a person suspected of killing a child or adult from being indicted and punished for murder.

**Sec. 10. [Payment of officers.]**—The returns of the assessors to the county clerks, and the returns of the county clerks to the secretary of state and the returns of the secretary of state to the legislature, shall be verified under oath as correct and complete returns for the precincts, counties, and state respectively, and all assessors engaged in carrying out the provisions of this act, are hereby required to cause the person or persons furnishing the information sought for in this act, to make oath that the said information is correct and true to the best of their knowledge and belief. The assessors shall be paid two cents per capita for each person recorded. The county clerk shall be paid five mills per capita for compiling the precinct returns of the assessors; and the said amounts shall be allowed by the county commissioners of each county respectively, whenever the said county commissioners shall be satisfied that the assessors of the respective counties, and the clerks thereof, have complied with the provisions of this act; and the secretary of state shall be allowed two mills per capita for compiling the returns of the county clerks, the said amount to be paid out of any funds of the

state not otherwise appropriated; and should any officer, whose duty it is under the provisions of this act, to take or cause to be taken, the various classes of information provided for in this act, fail, neglect, or refuse to perform any of the aforesaid duties, he shall upon proof and conviction thereof, forfeit and pay a sum not less than one hundred dollars, nor more than five hundred dollars, and it is hereby made the duty of the district attorney in each judicial district of this state, to make diligent inquiry at the county seat of each county within their respective judicial districts as to whether any officer herein named has neglected or failed to perform the duties herein assigned to him, and in case any such neglect or failure appear he shall cause the said party or parties so offending to be arrested and punished without unnecessary delay. [Amended 1875. 66.]

## CHAPTER 12.—CHATTEL MORTGAGES.\*

**SECTION 1. [Foreclosure].**—Every mortgage of personal property containing and giving to the mortgagee or any other person a power to sell the property described therein, upon default being made in any condition of such mortgage, may be foreclosed in the cases and in the manner hereinafter specified. [1867, 12th Sess. Ter. § 1, 9. G. S. 481.]

**SEC. 2. [Requisites].**—To entitle any person to foreclose a chattel mortgage as hereinafter prescribed, it shall be requisite, 1. That some default in a condition of such mortgage shall have occurred, by which the power to sell became operative. 2. That if no suit or proceeding shall have been instituted at law to recover the debt then remaining secured by such mortgage or any part thereof, or if any suit or proceeding has been instituted that the same has been discontinued, or that an execution upon the judgment rendered thereon, has been returned unsatisfied, in whole or in part, and 3. That such mortgage, containing the power of sale, has been duly recorded.

**SEC. 3. [Notice of sale].**—Notice that such mortgage will be foreclosed by a sale of the mortgaged property, or some part thereof, shall be given as follows: by advertisement published in some newspaper printed in the county in which such sale is to take place, or in case no newspapers are printed therein, by posting up notices in at least five public places in said county, two of which shall be in the precinct where the mortgaged property is to be offered for sale, and such notices shall be given at least twenty days prior to the day of sale.

**SEC. 4. [Contents of notice].**—Every such notice shall specify, 1. The date of the mortgage and where recorded. 2. The names of the mortgagor and mortgagee, and the assignee of the mortgagee, if any. 3. The amount claimed to be due thereon at the time of the first publication or posting of such notice. 4. A description of the mortgaged property, conforming substantially with that contained in the mortgage. 5. The time and place of sale.

**SEC. 5. [Postponement of sale].**—Such sale may be postponed from time to time, by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale shall be postponed; or in case no newspaper is published in the county in which such sale is to be had, by posting a notice of such adjournment in some conspicuous place at the place designated in the original notice posted for said sale to be had.

**SEC. 6. [Sale, when and where held].**—Such sale shall be at public auction in the daytime, between the hours of 10 A. M. and 4 P. M., in the county where the mortgage was first recorded, or in any county where the property may

\*NOTE.—"An act relating to the sale and transfer of personal property under mortgage." Laws 12th Sess. Ter. 1867, 9. Chapter 46. G. S. 481. Took effect Feb. 18, 1867. The 9th section was superseded by "An act to prevent the fraudulent transfer of personal property." Laws 1877, 5. This act is inserted in lieu of said original 9th section. In determining the *bona fides* of a chattel mortgage it is immaterial what the assignee of the mortgagee paid for it. 2 Neb. 253. When on default the mortgagee took possession of the property, and on the same day the owner of a judgment against him levied thereon, *held*, that an injunction would not lie at the instance of the mortgagee restraining a sale under the levy. 4 Neb. 373. When bill of sale treated as a chattel mortgage, 10 Neb. 334. For other provisions relative to chattel mortgages see *Franda*. See also 3 Neb. 131. 8 Id. 373.

have been removed by consent of parties, and in which the mortgage was duly recorded, and in view of said property.

**SEC. 7. [Purchase by mortgagee].**—The mortgagee, his assignees, and his or their legal representatives, may fairly and in good faith, purchase any of the mortgaged property offered at such sale.

**SEC. 8. [Equity of redemption extinguished].**—When a mortgage shall have been foreclosed, as herein provided, any and all right of equity of redemption, which the mortgagor may or might have had, shall be and become extinguished.

**SEC. 9. [Disposing of mortgaged property—Penalty].**—That any person who after having conveyed any article of personal property to another by mortgage, shall during the existence of the lien or title created by such mortgage, sell, transfer, or in any manner dispose of the said personal property, or any part thereof, so mortgaged, to any persons or body corporate, without first procuring the consent of the mortgagee of the property, to such sale, transfer or disposal, or shall remove, permit, or cause to be removed, said mortgaged property, or any part thereof, out of the county within which such property was at the time such mortgage was given on it, with intent to deprive the mortgagee of his security, without first obtaining the consent in writing of the mortgagee of such property to such removal, shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the penitentiary for a term not exceeding ten years, and be fined in a sum not exceeding one thousand dollars. [1877, 5. Took effect June 1, 1877.]

## CHAPTER 13.—CITIES OF THE FIRST CLASS.

**SECTION 1. [Cities of the first class].**—That all cities now governed as cities of the first class, and all cities of more than twenty-five thousand inhabitants, shall be governed by the provisions of this act. [1881 § 1, chap. 17.]

**SEC. 2. [Population].**—Whenever any city shall hereafter have attained a population of more than twenty-five thousand inhabitants, and such fact shall have been duly ascertained and certified to the governor by the mayor of such city, he shall declare by public proclamation such city subject to the provisions of this act.

**SEC. 3. [Corporate limits].**—The corporate limits of any city heretofore incorporated and subject to the provisions of this act shall remain as heretofore, except as changed in accordance with the provisions of the following section.

**SEC. 4. [Additions to city].**—The proprietor or proprietors of any land within the corporate limits of a city of the first class, or adjoining and contiguous to the same, may lay out said land into lots, blocks, streets, avenues, alleys and other grounds under the name of \_\_\_\_\_ addition to the city of \_\_\_\_\_, and shall cause an accurate map or plat thereof to be made out, designating explicitly the land so laid out, and particularly describing the lots, blocks, streets, avenues, alleys, and other grounds belonging to such addition. The lots must be designated by numbers, and the streets, avenues, and other grounds by names or numbers, and such plat shall be acknowledged before some officer authorized to take the acknowledgment of deeds, and have appended a survey, made by some competent surveyor, and said surveyor shall certify that he has accurately surveyed such addition, and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds, are well and accurately staked off and marked; and when such map or plat is so made out, acknowledged and certified and after being approved by the mayor and council, the same shall be filed and recorded in the office of the county clerk of the county; and thereupon such plat shall be equivalent to a deed in fee simple to said city from the proprietor or proprietors of all streets, avenues, alleys, public squares, parks, and commons, and of such portion of

SEC. 1.—107. "An act for an act to incorporate cities of the first class, and regulating their duties, powers and government," approved and took effect March 1, 1881. The act of incorporation must be accepted as a whole. The city in accepting its benefits must perform the duties required. 5 Neb. 446.

the land as is therein set apart for public and city use, or is dedicated to charitable, religious or educational purposes; and all additions thus laid out within the said corporate limits shall remain a part of such city; and all additions now or hereafter laid out adjoining and contiguous to the said corporate limits, shall be included within the same, and be and become thereupon a part of such city for all purposes whatsoever; and the inhabitants of such addition shall be entitled to all the rights and privileges, and subject to all the laws, ordinances, rules and regulations of the city to which said land is an addition; *Provided*, The mayor and council shall have power by ordinance to compel the owners of any such additions to lay out streets, avenues and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or in addition thereto, contiguous to or near the proposed addition; and no addition shall have any validity, rights, or privileges as an addition unless the terms and conditions of such ordinance are complied with, and the plat thereof shall have been submitted to and approved by the mayor and council and such approval endorsed thereon.

**SEC. 5. [Name—Service of process.]**—The corporate name of each city organized under or governed by this act, shall be "The City of \_\_\_\_\_," and all and every process or notice whatever, affecting any such city shall be served upon the mayor, or acting mayor, or in the absence of both of said officers from the city, then upon the city clerk.

**SEC. 6. [Saving clause.]**—No right of property accrued to any city, corporation or person under any law heretofore in force shall be affected by this act, and all city ordinances now in force and not repugnant to the provisions of this act shall remain and continue in force until altered or repealed by the mayor and council.

**SEC. 7. [General power.]**—Each city governed by the provisions of this act shall be a body corporate and politic, and shall have powers: 1st. To sue and be sued. 2d. To purchase and hold real and personal property for the use of the city, and real estate sold for taxes. 3d. To sell and convey any real or personal estate owned by the city, and make such order respecting the same as may be conducive to the interests of the city. 4th. To make all contracts and do all other acts in relation to the property and concerns of the city necessary to the exercise of its corporate or administrative powers. 5th. To exercise such other and further powers as may be conferred by law. The powers hereby granted shall be exercised by the mayor and council of such city as hereinafter set forth.

**SEC. 8. [Wards.]**—Each city governed by this act shall be divided into six wards, the boundaries of which shall be defined by ordinance. Said wards shall be equal in population, as near as may be, and in all cities of the first class heretofore incorporated wherein existing wards are not equal in respect to population, the council of such cities shall, within thirty days after this act shall take effect, re-district said cities into six wards, equal as near as may be in population. Each ward shall constitute an election district; *Provided*, That when any ward shall contain over five hundred legal voters, the mayor and council may by ordinance divide such ward into two election districts.

**SEC. 9. [Precinct and election districts.]**—Precinct lines in that part of the county embraced within the corporate limits of a city of the first class, shall correspond with the ward lines in such city, and such precincts shall correspond in number with the wards of the city, and be co-extensive with the same; *Provided*, That when a ward is divided into two election districts, the precinct corresponding with such ward shall be divided so as to correspond with the election districts.

**SEC. 10. [Voting—Polls.]**—At all elections authorized by this act, the polls shall be opened at such place in each election district as may be designated by the mayor, or as fixed by ordinance, and they shall be kept open between the hours of 8 o'clock A. M., and 7 o'clock P. M., and no longer.

**SEC. 11. [Elections—Officers.]**—The general city election in all cities



governed by this act shall be held on the first Tuesday in April, 1881, and every two years thereafter, for the election of the following named officers, to wit: mayor, police judge and treasurer. Each of said officers shall be elected by a plurality of votes, for the term of two years, commencing on the first Tuesday succeeding their election, and they shall hold their respective offices until their successors are elected and qualified. At the first meeting of the council, after its organization, they shall elect a city clerk, who shall hold his office for the term of one year, and until his successor is elected and qualified. A city marshal, a city engineer, a city attorney, a street commissioner, and a chief of the fire department shall be appointed, and may be removed, by the mayor by and with consent of a majority of the entire council.

**SEC. 12. [Councilmen—Qualifications and bonds.]**—The council of each city governed by this act, shall consist of twelve members, who shall be qualified electors of said city, and shall be actual and *bona fide* owners of real estate therein. Each councilman shall be required, before entering upon the duties of his office, to give a bond to said city for the faithful discharge of his duties, in the sum of two thousand dollars. Such bond shall be filed with and be approved by the mayor.

**SEC. 13. [Same—Elections—Term of office.]**—In cities now incorporated and governed as cities of the first class, the qualified voters of the city at the annual city election to be held in 1881, and every two years thereafter, shall, by a plurality of votes of the entire city, elect six councilmen to be designated councilmen at large, who shall serve for the term of two years. In such cities at the annual city election to be held in 1881, the qualified voters of each ward shall elect one councilman to be designated councilman from the ——— ward, who shall serve for the term of one year. At the annual city election to be held in 1882, and every two years thereafter, the qualified voters of each ward shall elect one councilman who shall serve for the term of two years. The six councilmen at large and the six ward councilmen shall constitute the city council,—the councilmen at large and the ward councilmen being elected upon alternate years. Ward councilmen shall be residents of the ward from which they may be elected. All councilmen's term of office shall commence the Tuesday next succeeding the day of election, upon which day they shall assemble together and organize the city council. In cities hereafter organized as cities of the first class, the councilmen at large and the ward councilmen shall hold their offices as above provided, and shall be elected upon alternate years.

**SEC. 14. [Electors—Canvass of votes.]**—The qualifications of electors in the several wards shall be the same as is required for electors in precincts under the laws of the state. A meeting of the council shall be held the first Monday after each annual city election, at which meeting the returns shall be canvassed, and it shall cause the clerk to make out and deliver certificates of election to the persons found to be elected, and a neglect of any such officer to qualify within ten days after the delivery to him of such certificate, shall be deemed a refusal to accept the office to which he may have been elected. No person shall be eligible to any city office unless he is a qualified voter in the city at the time of his election or appointment.

**SEC. 15. [Powers of council.]**—The mayor and council of each city created or governed by this act, shall have the care, management and control of the city, its property and finances, and shall have power to pass any and all ordinances not repugnant to the constitution and laws of this state, and such ordinances to alter, modify, or repeal, and shall have power,—

1st. **[License.]**—To levy and collect a license tax on runners, hawkers, peddlers, liquor sellers, pawn-brokers, shows, theatres, and exhibitions for pay, billiard tables, ball and ten-pin alleys, without regard to the number of pins used, hacks, drays or other vehicles used for pay within the city, and may prescribe the compensation for the use of said hacks, drays and other vehicles.

2nd. **[Travelers.]**—To adopt all such measures as they may deem necess-

ary for the accommodation and protection of strangers and the traveling public in person and property.

3rd. [**Disorderly houses, gaming etc.**].—To restrain, prohibit and suppress tippling shops, houses of prostitution, and other disorderly houses and practices, all games and gambling, and desecrations of the Sabbath, (commonly called Sunday) and all kinds of indecencies; also to regulate and license, or prohibit, the keeping and use of billiard tables, ten-pins or ball alleys, shooting galleries, and other similar places of amusements; and to prohibit and suppress, by ordinance, all lotteries and gift enterprises of all kinds under whatsoever name carried on.

4th. [**Contagious diseases.**].—They shall have power to make regulations to prevent the introduction of contagious, infectious, or malignant diseases into the city; to create a board of health; to make quarantine laws and enforce the same within the corporate limits, or within three miles thereof.

5th. [**Public buildings.**].—To erect, establish, maintain, and regulate hospitals, work-houses, houses of correction, jails, station houses, and other necessary buildings.

6th. [**Health—Nuisances.**].—To make regulations to secure the general health of the city, to provide for the prevention, abatement and removal of nuisances, to make and prescribe regulations for the location, construction, and keeping in order all slaughter houses, stock yards, warehouses, stables, or other places where offensive matter is kept or is liable to accumulate, whether within the corporate limits or within three miles thereof.

7th. [**Police.**].—To establish, regulate, and support night watch and police, and to define the duties thereof.

8th. [**Light streets—Gas.**].—To provide for the lighting of streets, laying down of gas-pipes and erection of lamp-posts, and to regulate the sale of gas, and rent of gas-metres within the city.

9th. [**Regulate weights and measures.**].—To regulate the weighing and measuring of hay, wood, and other articles exposed for sale, and of all coal sold or delivered within the city.

10th. [**Public library.**].—To establish and maintain public libraries and reading rooms, to purchase books, papers, maps and manuscripts therefor; and to receive donations and bequests of money or property for the same in trust or otherwise. They may also pass necessary by-laws and regulations for the protection and government of the same.

11th. [**Markets—Protect property—Streams.**].—To erect and establish market houses, and make market places, and to provide for the erection of all other useful and necessary buildings for the use of the city, and for the protection and safety of all property owned by the city; to provide for the safety and protection of private property where damages are likely to occur by the action of the elements or through the carelessness or negligence of any servant or officer of the city; and to establish, alter and change the channels of streams and water courses within the city and bridge the same: *Provided*, That any such improvement costing in the aggregate a sum greater than five thousand dollars shall not be authorized until the ordinance providing therefor shall be first submitted to, and ratified by, a majority of the legal voters of such city voting thereon.

12th. [**Census.**].—To provide for and cause to be taken an enumeration of the inhabitants of the city.

13th. [**Elections.**].—To provide by ordinance for the election of city officers, and prescribe the manner of conducting the same, and the returns thereof and the registration thereof; and for deciding contested elections in any manner not in conflict with existing laws.

14th. [**Removal of officers—Agents.**].—To provide for removing officers of the city for misconduct, and to create any office or employ any agent they may deem necessary for the government and best interests of the city.

15th. [**Fines.**].—To regulate the police of the city, and impose fines, forfeit-

ures, and penalties for the breach of any ordinance, and provide for the recovery and collection thereof; and to provide in default of payment for confinement in the city jail or prison, and for hard labor in the city.

16th. **[Regulate officers—Agents.]**—To prescribe and regulate the duties, powers, and compensation of all officers, agents, and servants of the city not herein provided for.

17th. **[Bonds.]**—To require of all officers, or servants elected or appointed in pursuance of this act, bond and security for the faithful performance of their duties. No officer shall become security upon the official bond of another.

18th. **[Cruelty to animals.]**—To provide for the prevention of cruelty to animals.

19th. **[Domestic animals.]**—To prohibit or regulate the running at large of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits, and provide for the impounding of all animals running at large, contrary to such prohibition, and also for the forfeiture and sale of animals impounded to pay the expenses of taking up, caring for, and selling the same, including cost of advertising and fees of officers.

20th. **[Dogs.]**—To regulate, license, or prohibit the running at large of dogs, and guard against injuries or annoyances therefrom, and to authorize the destruction of the same when running at large contrary to the provisions of any ordinance.

21st. **[Appropriations.]**—To appropriate money and provide for the payment of the debts and expenses of the city.

22d. **[Street auctions.]**—To regulate, license or prohibit the sale of domestic animals, or of goods, wares, and merchandise at public auction on the streets, alleys, highways, or any public ground within the city.

23d. **[Auctions.]**—To regulate or license the auctioneering of goods, wares, and merchandise.

24th. **[Streets.]**—To care for and control, to name and rename streets, avenues, parks and squares within the city; to provide for the opening, vacating, widening and narrowing of streets, avenues, and alleys within the city under such restrictions and regulations as may be provided by law.

25th. **[Fire limits.]**—To define fire limits, and regulate the erection of all buildings and other structures within the corporate limits, and provide for the removal of any building or structure, or addition thereto, erected contrary to such regulations.

26th. **[Sewers.]**—To lay off the city into suitable districts for the purpose of establishing a system of sewerage and drainage; to provide such system and regulate the construction and repairs and use of sewers and drains, and of all proper house connections and branches, and provide penalties for any obstruction of, or injury to, any sewer or part thereof.

27th. **[Water works.]**—To erect, construct and maintain water works, either within or without the corporate limits of the city, and to make all needful rules and regulations concerning the use of water supplied by such water-works, and to do all acts necessary for the construction, completion, management and control of the same, including the appropriation of private property for the public use in the construction and operation of such water works; compensation for such appropriation to be made as is provided by this act. And the mayor and council of each city, created or governed by this act, shall have power to contract with and procure individuals or incorporations to construct and maintain water works on such terms and under such regulations as may be agreed on.

28th. **[Fires.]**—To provide for the organization and support of a fire department, and to establish regulations for the prevention and extinguishment of fires.

29th. **[Parks.]**—To hold and improve public grounds, and parks within or without the limits of the city, and provide for the protection and preservation of the same.

**30th. [Officers' reports.]**—To require from any officer of the city, at any time, a report in detail of the transactions in his office, or of any matters connected therewith.

**31st. [Fast driving.]**—To prevent horse-racing and immoderate driving or riding in the streets and to compel persons to fasten their horses or other animals attached to vehicles while standing in the streets.

**32nd. [Explosive articles.]**—To regulate the transportation and keeping of gunpowder, oils and other combustible and explosive articles.

**33d. [Use of streets.]**—To regulate the transportation of articles through the streets, and to prevent injuries to the streets from overloaded vehicles.

**34th. [Eminent domain.]**—To appropriate private property for the use of the city.

**35th. [Public peace.]**—To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, by intoxication, drunkenness, fighting or using obscene or profane language in the streets, or other public places, or otherwise violating the public peace by indecent and disorderly conduct, or by lewd or lascivious behavior.

**36th. [Punish wrong-doers.]**—To provide for the punishment of vagrants, tramps, common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, watch stuffers, ball game players, persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves.

**37th. [Vacancies in office.]**—To provide for filling such vacancies as may occur in the office of councilman, or other elective office of the city, by calling special elections for that purpose.

**38th. [Trees.]**—To provide for the planting and protection of shade or ornamental and useful trees.

**39th. [Inspection of weights and measures.]**—To provide for the inspection of weights and measures, and prohibit the use of any imperfect weights or measures, or weighing apparatus.

**40th. [Railway depots.]**—To regulate levees, depots, depot grounds, and places for storing freights and goods, and to provide for and regulate the passage of railways through the streets and public grounds of the city.

**41st. [Regulate railways.]**—To regulate the crossing of railway tracks, to regulate the running of railway engines, cars, and trucks within the limits of the city, and to make other and further rules and restrictions, to prevent accidents at crossings, and on the tracks of railroads, and to prevent fires from engines.

**42nd. [Firearms and fireworks.]**—To punish and prevent the carrying of concealed weapons, the discharge of firearms or fireworks of any description in any of the streets, alleys, or public grounds, or about or in the vicinity of buildings.

**43d. [Prevent nuisances.]**—To prevent any person from bringing, depositing, having or leaving upon or near his premises or elsewhere within the city any dead carcass, and putrid beef, pork, fish, hides, or skins of any kind, or any other unwholesome substance, and to compel the removal of the same.

**SEC. 16. [President of council.]**—The city council shall have power to elect one of their own body president of the council, who shall preside at all meetings of the council, and in his absence to elect one of their own body to occupy his place temporarily, who shall be styled acting president of the council, and the president or acting president, when occupying the place of the mayor, shall have the same powers as the mayor, and shall have the same rights and privileges as other members of the council.

**SEC. 17. [Board of equalization.]**—The council shall have power to act as a board of equalization for the city; to equalize all assessments and to correct

any error in the listing or valuation of property, and to supply any omissions in the same, and shall have the same powers as county commissioners have in similar cases.

**SEC. 18. [Ordinances].**—All ordinances of the city shall be passed pursuant to such rules and regulations as the council may prescribe; *Provided*, That upon the passage of all ordinances the yeas and nays shall be entered upon the record of the city council, and a majority of the votes of all the members of said council shall be necessary to their passage.

**SEC. 19. [Same—Proof].**—All ordinances of the city may be proven by the certificate of the clerk under the seal of the city, and when printed or published in a book or pamphlet form, and purporting to be published or printed by authority of the city council shall be read and received in all courts and places without further proof.

**SEC. 20. [Report on finances].**—The mayor and council shall cause to be published annually on the first day of July, a statement of the receipts and expenditures of the city and the financial condition of the same.

**SEC. 21. [Witnesses].**—The council or any committee of the members thereof, shall have power to compel the attendance of witnesses for the investigation of matters that may come before them, and the presiding officer of the council, or the chairman of such committee for the time being, may administer the requisite oaths; and such council or committee shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

**SEC. 22. [Sewer and refunding bonds].**—The mayor and city council are hereby authorized and empowered to issue bonds of the city, with interest coupons annexed thereunto in such amounts and for such length of time, as they may deem proper, the rate of interest not to exceed six per centum per annum, for the construction and maintenance of sewers, or in renewal of outstanding bonds of said city bearing a higher rate of interest. All such bonds shall express upon their face the purposes for which they are issued; *Provided*, The bonded indebtedness of said city shall not, at any time, exceed in the aggregate ten per centum of the assessed valuation of the taxable property in said city; *Provided further*, No bonds shall be issued except such renewal bonds, in the excess of \$100,000, in any one year, nor until the legal electors of said city shall have authorized the same by a vote of two-thirds of all the electors voting at a general or special election of said city called after twenty days public notice, stating distinctly the amount and the purpose for which they are to be issued; which bonds, or the proceeds from the sale thereof, shall not be diverted from the purpose for which they were issued, and shall not be disposed of at less than par.

**SEC. 23. [Sinking fund].**—The mayor and council are hereby required to make provisions for a sinking fund to redeem at maturity the bonded indebtedness of the city, and also, to provide for the payment of interest on its bonds, as such interest may mature; and for such purpose the mayor and council thereof, shall levy and collect a tax not exceeding one per cent. in any one year, upon all property taxable for general city purposes.

**SEC. 24. [Purchase of bonds].**—The sinking fund to redeem at maturity the bonded indebtedness of the city, may be used to purchase such bonds before maturity on such terms and in such manner as may be prescribed by ordinance; *Provided*, That bondholders shall be given an opportunity to compete for the sale of bonds held by them, and the bonds that can be purchased upon the most favorable terms shall be preferred.

**SEC. 25. [Assessment roll].**—The mayor and council shall have power to levy and collect taxes for general purposes not exceeding twelve mills on the dollar valuation in any one year, on all the real estate and personal property within

SEC. 18. If certain provisions of an ordinance are void and others valid, the latter being distinct and separate from the former, those which are valid must stand and the others treated as inoperative and of no avail. 7 Neb. 377.

SEC. 25. This is substantially the same as sec. 24. G. S. 128, which was held constitutional. 6 Neb. 54. Under it all property taxable under the laws of the state is liable to city taxes. *Id.* (Overruling 1 Neb. 16.)

the corporate limits of the city, taxable according to the laws of this state; the valuation of such property to be taken from the assessment roll of the proper county, and it shall be the duty of the county clerk to permit the city clerk to make out from the assessment rolls of the county, an assessment roll for the city of all property liable to taxation as above specified; *Provided*, That the authorities of any such city shall not in any year issue warrants or orders to an amount exceeding ninety per cent of the amount of taxes levied for such year, and the amount actually received from other sources, and said city authorities shall not contract or incur any indebtedness in addition to the amount for which they are authorized to issue warrants, or orders, or bonds. Upon the completion of such copy of said assessment roll the city clerk shall add to said roll any and all real estate in said city, which is exempt from taxation for general purposes, and assess the same as near as may be to correspond with the assessed value of like property on said county roll, and enter the same in a separate column for the purposes of special assessment in said city authorized by law, and shall be subject to equalization by the city council the same as other property, when sitting as a board of equalization.

**SEC. 26. [Water rent tax].**—The mayor and city council shall have power to levy and collect taxes for the special purpose of paying rents for water for fire purposes and for public use, not exceeding four mills on the dollar in any one year, upon all property taxable for city purposes.

**SEC. 27. [Payment of taxes].**—All municipal taxes and all local or special assessments in such city shall be paid in cash and warrants of said city; *Provided*, That coupons on any bonds of such city shall be received for any tax or assessments, except for taxes levied for school purposes.

**SEC. 28. [Collection of taxes].**—All municipal taxes shall be collected from the personal property of the person, persons, or body corporate owning the same, whenever the same is practicable, and whenever personal property cannot be found belonging to any such person, persons, or bodies corporate, then and in that case all such delinquent municipal taxes as may have been levied on any real estate within such city shall be collected by the county treasurer of the county in which such city is situated, by sale of such real estate the same as in case of delinquent county taxes.

**SEC. 29. [Ordinances for collecting taxes].**—The mayor and council shall have full power and authority to pass any and all ordinances not inconsistent with the laws of this state that they may deem necessary to secure the speedy and thorough collection of all municipal taxes and special assessments.

**SEC. 30. [Assessment roll—Board of equalization—Levy].**—The city clerk shall complete the assessment roll for the city on or before the second Monday of June of each year, unless otherwise ordered by the council, and when such roll is completed the council shall hold a session of not less than five days as a board of equalization, giving notice of such sitting for at least six days prior thereto through the official paper of the city. The mayor and council shall make the annual levy at the first regular meeting of the city council in July of each year.

**SEC. 31. [Delinquent tax—Interest—Distraint].**—On the first day of May next succeeding the levy thereof, all unpaid city taxes in cities of the first-class shall be and become delinquent, and shall thereafter draw interest at the rate of one per centum per month payable in advance, which interest shall be collected the same as the tax so due, and it shall be the duty of the city treasurer to proceed as soon as practicable after the first day of May, to make such delinquent tax out of the personal property of such delinquent, if any such property can be found within the city. No demand of taxes shall be necessary, but it shall be the duty of every person owing any municipal tax or taxes in such city to attend at the treasurer's office and pay the same.

**SEC. 32. [Warrant of distress—Delinquent taxes].**—On or before the first day of March, A. D. 1882, the city clerk of each city governed hereby shall endorse upon any and all tax lists containing delinquent taxes a warrant of

distress, in manner and form as herein provided, and deliver the same to the city treasurer, and thereupon the city treasurer shall proceed under and by virtue of such warrant to collect any and all taxes then delinquent and unpaid on any list or lists, in the same manner, and with the same power and authority in all respects as county treasurers are authorized to collect delinquent taxes; and all county treasurers who may at this time have any list or lists of real estate taxes due any city of the first class, shall on or before the first day of March, 1882, return the same to the city clerk of such city, together with a full and final statement in regard to his doings respecting the same; and shall turn over to the city treasurer all funds or city warrants in his possession received by him on account of said delinquent list or lists.

**SEC. 33. [Tax lists—Correction.]**—As soon as the assessment-roll shall have been equalized, and the annual levy made thereon, the city clerk shall immediately make out a tax list and duplicate thereof, which shall be as nearly as practicable in the form prescribed by law for the tax list to be furnished county treasurers, and he shall deliver such tax list to the city treasurer on or before the first day of October next, after the date of the levy in each year, and he shall keep the duplicate thereof in his office. Errors in the name of persons assessed may be corrected by the treasurer, and the tax collected from the person intended, and in case the treasurer find any land has been omitted in the assessment, he shall report that fact to the council, who may assess the same and direct the correction of the tax list.

**SEC. 34. [Tax warrant.]**—To each tax list so delivered, a warrant under the hand of the city clerk shall be annexed, to be substantially in the following form, to wit:

In the name and by the authority of the State of Nebraska:

To \_\_\_\_\_, City Treasurer of the city of \_\_\_\_\_, in said state:

You are hereby commanded to collect from each of the persons and corporations named in the annexed tax list, and of the owners of the real estate described therein, the taxes set down in such list opposite their respective names, and the several parcels of land described therein; and in case any person or corporation, upon whom any such tax or sum is imposed, or who by law is required to pay the same, shall refuse or neglect to pay the full amount thereof before the first day of May next, you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed, as are by law required to pay such tax.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18—.

\_\_\_\_\_, City Clerk of the city of \_\_\_\_\_.

**SEC. 35. [Powers of collector.]**—Such warrant shall fully authorize and empower the city treasurer to levy on any personal property belonging to any such delinquent, and collect therefrom any municipal taxes then due from such delinquent, and such warrant shall be a full and complete justification to the treasurer in any action brought to recover damages or costs for any act or proceeding by him done or taken in conformity with the commands thereof.

**SEC. 36. [Same—Fees.]**—The powers, rights, duties and proceedings of the city treasurer in cities of the first class, and of such deputies as he may appoint, shall in all respects, as far as applicable and except as herein otherwise provided, be the same in respect to the collection of municipal taxes and assessments, as those of county treasurers in like cases with reference to the collection of county taxes; and for the collection of any and all delinquent taxes he shall be entitled to the same fees as are or may be allowed by law to county treasurers for similar services.

**SEC. 37. [Sale of realty for taxes—Redemption.]**—It shall be the duty of the city treasurer on or before the twentieth day of July of each year to make out a complete delinquent list of all lots, lands or parcels of real estate, the taxes and assessments on which, for that year, remain uncollected at that time, with the amount of such tax, taxes or assessments, together with penalty and interest due from each lot or parcel of real estate set opposite the same; arranging the

several lots, lands or parcels of real estate in such lists in the order that they appear on the tax list; stating also in each case, the purpose for which tax or assessment was levied. The county treasurer shall receive such delinquent list, and he shall advertise the real estate therein described for sale for such delinquent taxes or assessments at the same time he advertises the sale of real estate for delinquent county taxes, by adding the amount of such delinquent city taxes and assessments to the amount of delinquent state, county and other taxes, and he shall sell such lots, lands or parcels of real estate for the purpose of paying all such delinquent taxes and assessments, and shall credit such city for the amount of taxes or assessments so collected, which shall be subject to the order of the treasurer of such city. In the sale of any real estate, as above provided for, and in the giving of certificates of sale, and tax deeds therefor, the county treasurer shall proceed in the same manner as is or may be provided by law for his proceedings in the sale of real estate for delinquent county taxes and with like power and authority; and the real estate so sold may be redeemed within the time and upon the same terms and conditions in every respect as is or may be provided by law for the redemption of real estate sold for delinquent county taxes; *Provided*, That under this act the county treasurer shall be authorized to collect only by sale of real estate; and *Provided further*, It shall be the duty of the city treasurer upon any taxes being collected by him after the delinquent tax list shall have been delivered to the county treasurer to forthwith notify the county treasurer of such collection that the same may be cancelled on the delinquent tax list; and *Provided further*, That the failure, neglect or refusal of the city treasurer to make the tax assessed against any real estate by distress and sale of the personal property of the owners thereof, shall not, in any wise effect, or invalidate the sale of such lands for such tax.

**SEC. 38. [Tax lien—Limitation of action.]**—Municipal taxes and special assessments upon real estate in any such city are hereby made a perpetual lien thereupon from the day on which the same were levied against all persons or bodies corporate, except the United States and this state. Any person or body corporate purchasing any real estate for any tax or assessment levied by the authorities of any city of the first class shall, after the lapse of five years from the time of recording the treasurer's deed therefor, acquire and have a complete title thereto, and thereafter all persons shall be debarred from commencing or sustaining any action in any court of this state to recover possession of the same.

**SEC. 39. [Irregularities.]**—Irregularities in making assessments and returns thereof, in the equalization of assessments and in the mode and manner of advertising the sale of any property, shall not invalidate or affect the sale thereof when advertised and sold for delinquent city taxes or special assessments as herein provided; nor shall the sale of any real estate for such taxes or assessments be invalid on account of such real estate having been listed in any other name than that of the rightful owner or owners.

**SEC. 40. [Correction of irregularity—Error in assessment—Compromise—Special taxes and assessments.]**—The foregoing provisions shall apply to all taxes now due or heretofore delinquent, or that may hereafter become due and delinquent. Whenever any municipal tax or taxes levied for any former year shall remain uncollected because of any defect, error or irregularity in either the power or manner of making the levy thereof, it shall be lawful for the mayor and council of such city to again levy a tax upon the property so delinquent in lieu of such former tax or taxes, and at the same rate, and upon the same assessment as such former tax or taxes were levied, and such tax or taxes shall be inserted in the tax list, and shall be collected in the same manner as other general taxes are. The city council may at any time correct any error or defect, or supply any omission in the assessment or listing of any property subject to municipal tax made for the purpose of taxation for the then current fiscal year, and may require any and all persons to appear and answer under oath as to their possession or control of personal property subject to municipal taxation, and the



mayor and council by ordinance may make such compromise, settlement or adjustment of any action or litigation concerning the validity, legality, or regularity of any tax or taxes levied for city purposes, as they may deem just and expedient, and the city treasurer shall conform thereto in his action respecting the collection of taxes under any tax list in his hand. These provisions shall apply equally to general municipal taxes and to special assessments, as far as the same may be applicable, unless otherwise provided in the ordinance levying the same. Special taxes and assessments shall be deemed delinquent if not paid in thirty days after the passage and approval of the ordinance levying the same, in each case, and a penalty of ten per cent. together with interest at the rate of one per cent. a month, payable in advance, shall be paid on all delinquent special taxes or assessments, from the time the same shall become delinquent.

**SEC. 41. [Grade of streets—Appraisers—Damages].**—The mayor and council of any city governed by this act shall have power to establish by ordinance, the grade of any street, alley or avenue within the city, and when the grade of any street, avenue, or alley shall have been so established such grade shall not be changed, except by a vote of two-thirds of the council, and not then until the damages to property owners, which may be caused by such change of grade, shall have been assessed and determined by three disinterested appraisers, who shall be appointed by the mayor and council for that purpose, who shall make such appraisal, taking into consideration the benefits, if any, to such property, and file their report with the city clerk within ten days after receiving notice of their appointment; and the amount of damages so assessed shall be tendered to such property owners or their agents before any such change of grade shall be made.

**SEC. 42. [Improving streets—Sidewalks].**—The council shall have power to open, extend, widen, narrow, grade, pave, or otherwise improve and keep in good repair, or cause the same to be done in any manner they may deem proper, any street, alley or avenue within the limits of the city; and may grade, pave, park or otherwise improve any width or part of any such street, avenue or alley; and may also construct and repair or cause and compel the construction and repair of sidewalks in such city, of such material, and in such manner as they may deem proper and necessary; and to defray the costs and expense of such improvements, or any of them, the mayor and council of such city shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to and abutting upon the street, avenue, alley or sidewalk thus in whole or in part graded, paved, parked, extended, constructed or otherwise improved or repaired; *Provided*, That the above provision shall not apply to ordinary repairs of streets or alleys; and one-half of the expense of bringing streets, avenues, alleys or parts thereof, to the established grade, shall be paid out of the general fund of the city; *Provided further*, That in case the grade of any street, or part of street, used by the public, shall not have been established, or in case any street or part thereof shall not have been worked to grade, then, and in such case the owner or owners of any lot, lots or lands abutting on such streets or portion thereof, as aforesaid, may only be required to construct or repair the sidewalks along such street or part thereof, with plank, as the council may direct in each case; *And, provided further*, That in case the owner or owners of any such lot, lots or lands abutting on such street or portion thereof, shall fail to construct or

**SEC. 41.** To establish the existence of a grade, the records and files pertaining thereto should be produced; and unless these are shown to be either lost or destroyed secondary evidence will not be received. Loose and indefinite expression of officers indicating that they supposed a grade to have been established will not bind the city. 6 Neb. 27. And if there is no provision in the statute for the payment of damages, an action will not lie. *Id.* Under this section the damages must be first ascertained and tendered to property owners before the council have any authority to act. 4 Neb. 336. Damages accruing under this section, which have been ascertained and paid to property owners, cannot be reimbursed to city by means of special assessments. 10 Neb. 99.

**SEC. 42.** The city is liable for injuries caused by reason of defective sidewalks. 5 Neb. 446. But see section 60 of this chapter. The owner of a lot abutting on a public street was held liable to the city for the amount of a judgment recovered by a person who fell into an excavation in front of the lot, made by contractors who were erecting a building thereon. 5 Neb. 136. The provision of this section relative to payment of one-half of the expense of grading by owners of adjacent property, held constitutional. 4 Neb. 336.

repair such sidewalk in the manner, and within the time as directed and required by the council in each case, after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of defective or dangerous condition of any such sidewalk.

**SEC. 43. [Same—Proportion of tax.]**—Such taxes shall be levied on all the lots and lands bounding or abutting on such improvements, said tax to be either in proportion to the feet front so bounding and abutting on, or according to the value of such lots or lands as shown by the last previous assessment thereof for general city purposes, as the council may in each case determine; *Provided*, That when any such improvement shall extend into or through any unsubdivided tract or parcel or parcels of lands said taxes shall be so levied, if upon the basis of valuation, as not to be charged against the real estate adjoining such improvement for a greater depth than the average distance through the subdivided real estate to be taxed for said purpose.

**SEC. 44. [Same—Contract.]**—All grading, paving, macademizing or guttering of any streets, avenues or alleys in the city for which, or any part thereof, a special tax shall be levied, shall be done by contract with the lowest responsible bidder, to be determined by the council.

**SEC. 45. [Same—Cost at intersections.]**—The cost and expense of grading, filling, paving, culverting, curbing, guttering or otherwise improving, constructing or repairing streets, avenues, alleys and sidewalks at their intersections may be included in the special tax levied for the construction or improvement of any one street, avenue, alley or sidewalk, as may be deemed best by the council.

**SEC. 46. [When special tax due.]**—Such special taxes shall be due and may be collected as the improvements are completed in front of, or along, or upon any block or piece of ground, or at the time the improvement is entirely completed, or otherwise, according as shall be provided in the ordinance levying the tax.

**SEC. 47. [Same—Proceeding of officers—Warrant.]**—When any special tax is levied, it shall be the duty of the city engineer to calculate the amount of the tax thus due on each lot, part of lot or piece of ground subject to the same and file a statement thereof with the city clerk, who, as soon as the said tax is due on any lot or piece of ground, shall issue a certificate, describing such lot or piece of ground by number and block, and stating the amount of special tax due thereon, and the purpose for which tax was levied, and he shall forthwith deliver a duplicate of such certificate to the city treasurer, who shall, without delay, give at least five days notice through the official paper of the city, of the time when such tax will become delinquent. To every such certificate the city clerk shall append a warrant in the usual form requiring the city treasurer to collect such special tax or taxes by distress and sale of the goods and chattels of the person, persons, or bodies corporate owing any such special tax or taxes, if the same be not paid before the time fixed for the same to become delinquent; and to make his return of such warrant with his doings thereon, on or before the fifteenth day of July next thereafter.

**SEC. 48. [Apportionment of special assessments.]**—It shall be sufficient in any case to describe the lot or piece of ground as the same is platted and recorded, although the same belong to several persons; but in case any lot or piece of ground belong to different persons, the owner of any part thereof may pay his proportion of the tax on such lot or piece of ground and his proper share may be determined by the city treasurer.

**SEC. 49. [Completion and acceptance of work.]**—When any improvement mentioned in this act is completed according to contract, it shall be the duty of the city engineer to carefully inspect the same, and if the improvement is found to be properly done, such engineer shall accept the same, and forthwith report his acceptance thereof to the city council, who may confirm or reject such acceptance. When the ordinance levying the tax makes the same due as the improvement is completed in front of or along any block or piece of ground, the en-

gineer may accept the same in sections from time to time, if found to be done according to contract, reporting his acceptance as [in] other cases.

**SEC. 50. [Sidewalk obstructions.]**—The council shall also have power to provide for keeping sidewalks clean and free from all obstructions and accumulations, and may provide for the assessment and collection of taxes on unoccupied real estate, and for the sale and conveyance thereof, to pay the expenses of keeping the sidewalks adjacent to such real estate clean and free from obstructions and accumulations as herein provided.

**SEC. 51. [Drainage.]**—The mayor and council shall also have power to require any and all lots or pieces of ground within the city, to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon; and upon the failure of the owners of such lots or pieces of ground to fill or drain the same when so required, the council may cause such lots or pieces of ground to be drained or filled, and the cost and expense thereof shall be levied upon the property so filled or drained, and collected as other special taxes.

**SEC. 52. [Lighting railways.]**—The mayor and council shall have power to require the lighting of any railway within the city, the cars of which are propelled by steam, in such manner as they shall prescribe, and may fix and determine the number, size and style of the lamp posts, burners, lamps and all other fixtures and apparatus necessary for such lighting, and the points of location for such lamp posts, and in case the company owning or operating such railway shall fail to comply with such requirement, the council may cause the same to be done and may assess the expense thereof against such company, and the same shall constitute a lien upon any real estate belonging to such company and lying within such city, and may be collected in the same manner as taxes for general purposes.

**SEC. 53. [Special sewer assessment.]**—Special taxes may be levied by the mayor and council for the purpose of constructing sewers or drains within the city, such taxes to be levied on all the real estate lying and being within the sewerage district in which such sewer or drain may be situated, and according to the valuation of such real estate as fixed by the last regular assessment made prior to such levy; and all taxes or assessments made for sewerage purposes shall be collected in the same manner as other special assessments are, and shall be subject to the same penalty.

**SEC. 54. [Street railways—Use of streets.]**—All street railway companies now existing or hereafter created, in cities of the first class already incorporated or hereafter organized, shall be required to pave between their rails, at their own cost, whenever any street shall be ordered paved by the mayor and city council of such city. Such paving between the rails shall be done at the same time and shall be of the same material and character as the paving of the street upon which said railway track is located. Said street railway companies shall be required to keep that portion of the street between their rails in repair, using for said purpose the same material as the street upon which the track is laid at the point of repair. Upon streets in cities of the first class now paved and as streets are hereafter paved, street railway companies shall be required to lay in the best approved manner the strap or flat rail. The track of all railway companies when located upon the streets or avenues of the city, shall be kept in repair, and safe in all respects for the use of the traveling public, and such companies shall be liable for all damages resulting by reason of neglect to keep such tracks in repair or for obstructing the streets or avenues of such city. For injuries to persons or property arising wholly from the failure of such company to keep their tracks in proper repair and free from obstructions such companies shall be liable, and the city shall be exempt from liability.

**SEC. 55. [Same—Special assessment.]**—In the event of the refusal or neglect of such street railway companies to pave or repair between their rails when so directed by the mayor and council, upon the paving of any street upon which their track is laid, the mayor and council shall have power to pave or repair between said rails, and the cost and expense of such paving or repairing shall be

collected by levy and sale of any real or personal property of said street railway company, the same as special taxes are collected.

**SEC. 56. [Street sprinkling].**—On written petition of not less than one-half of the owners of feet front of the land fronting on any street, or any specified part thereof, the mayor and council may order such street or specified part thereof, to be sprinkled with water at such time or times as the council may deem proper. Such sprinkling shall be done by contract awarded to the lowest bidder in each case, or for the entire city or specified district thereof. To pay the expense of such sprinkling the council may make special assessments on the land abutting upon such street or specified part thereof, either on the valuation thereof as listed for taxation, or by foot front. Such assessment shall be a lien on the lands charged from the time the council determines the amount assessed against each parcel of land and shall be collected as special taxes.

**SEC. 57. [Limit of special assessments].**—Special assessments shall not be levied in any one fiscal year upon any lot or piece of ground in the city, to an amount exceeding in the aggregate five per cent. of the value of such lot or piece of ground at the close of such fiscal year, such value to be determined by three disinterested freeholders, to be appointed by the mayor and council as commissioners for that purpose, in every case of complaint of excessive assessment.

**SEC. 58. [Appropriation of land for streets].**—Whenever it shall become necessary to appropriate private property for the use of the city for streets, alleys, avenues, parks and public squares, and such appropriation shall be declared necessary by ordinance, the mayor, with the approval of the council, shall appoint three disinterested freeholders of the city, who after being first duly sworn to perform the duties of their appointment with fidelity and impartiality, shall assess the damage to the owners of the property respectively, taken by such appropriation, taking into consideration special benefits, if any. Such assessment shall be reported to the council for confirmation, and if the same be confirmed, the damages so assessed shall be paid to the owners of such property, or deposited with the city treasurer, subject to the order of such owners respectively; after which such property, may at any time be taken for the use of the city. If the assessment be not confirmed by the council, proceedings may be taken anew to assess the damages.

**SEC. 59. [Appeals from appraisement].**—In all cases of damage arising under the provision of this act, the party or parties whose property is damaged, or sought to be taken by the provisions of this act, shall have the right to appeal from such assessment of damage, to the district court of the county in which such property is situated, within sixty days after the assessment provided for in this act, and in case of such appeal, the decision and finding of the district court shall be transmitted by the clerk thereof, duly certified, to the city clerk to be filed and recorded in his office; but such appeal shall not delay the appropriation of the property sought to be taken, or retard the change of grade sought to be made, if such city shall first pay or deposit with the clerk of the district court the amount of money assessed by the freeholders appointed to assess said damages; and in no case shall said city be liable for the costs on such appeal, unless the owner of such real estate shall be adjudged entitled, upon the appeal, to a greater amount of damage than was awarded by said freeholders.

**SEC. 60. [No liability for injury without direct notice].**—That no city of the first class shall be liable for damages arising from defective streets, alleys, sidewalks, public parks, or other public places within such city, unless actual notice of the existence of the defect, by reason of which the injury arose for which damages are claimed, shall be proved to have been given to the mayor at least five days before the occurrence of such injury, and it is hereby made the duty of the mayor to keep a record of such notice, showing time when and by whom such notice was given and describing the defect complained of.

**SEC. 61. [Appropriation ordinance].**—At the first meeting of the council in each month, the mayor and council shall provide by ordinance, for the pay-

ment of all liabilities of the city, incurred during the preceding month or at any time prior thereto. No moneys shall be expended or payment made by the city, except in pursuance of a specific appropriation made for that purpose by ordinance.

**SEC. 62. [Veto of special items.]**—Any ordinance appropriating moneys shall be subject to the veto of the mayor, and the mayor may veto any single item in any such ordinance, and if such item be not passed over his veto, such item shall be stricken out, and shall not be paid by the city.

**SEC. 63. [Mayor's veto—Failure to return ordinance by the mayor.]**—The mayor shall have power to sign or veto any ordinance passed by the council. Any ordinance vetoed by the mayor may be passed over the veto by a vote of two-thirds of the whole number of councilmen elected, and shall thereupon take effect, notwithstanding the veto; and should the mayor neglect or refuse to sign any ordinance, or return the same with his objections in writing at the next regular or special meeting of the council, the same shall take effect without his signature.

**SEC. 64. [City warrants.]**—All orders and drafts on the treasury, for money, shall be signed by the mayor and shall be attested by the city clerk, who shall also affix the seal of the city, and keep an accurate record thereof, in a book to be provided for that purpose.

**SEC. 65. [Special meetings.]**—The mayor and any five councilmen shall have power to call special meetings of the council, the object of which shall be submitted to the council in writing, and the call and object and the disposition thereof shall be entered upon the journal by the clerk.

**SEC. 66. [Mayor's powers.]**—The mayor shall be a conservator of the peace throughout the city, and shall have power, by and with the consent of the council, to appoint any number of special policemen which he may deem necessary to preserve the peace of the city, and to dismiss the same at pleasure. He shall sign the commissions or appointment of all officers elected and appointed by the city government.

**SEC. 67. [Supervision of officers.]**—He shall have the superintending control of all the officers and affairs of the city and shall take care that the provisions of this act, and the ordinances of the city are complied with. He may, when he deems it necessary, require any officer of the city to exhibit his accounts or any other papers, and to make report to the council in writing touching any subject or matter he may require pertaining to his office.

**SEC. 68. [Mayor's duties.]**—He shall, from time to time, communicate to the city council such information, and recommend such measures as in his opinion may tend to the improvement of the finances, police, health, security, ornament, comfort and general prosperity of the city. He shall be active and vigilant in enforcing all laws and ordinances of the city, and shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty. He shall have such jurisdiction as may be vested in him by ordinance, over all places within three (3) miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance or regulation thereof.

**SEC. 69. [Appointments and removal from office.]**—He shall have power, by and with the consent of a majority of the entire council, to appoint all officers other than those provided for in this act, that may be deemed necessary for the good government and efficient police of the city; and shall have power in like manner to remove from office, by and with the consent of the council, any person holding an office created by ordinance or appointive office.

**SEC. 70. [Power to call aid.]**—The mayor and marshal shall each have power to call upon any citizen to aid in the enforcement of any ordinance or suppression of any riot, and any person who shall refuse or neglect to obey such call shall forfeit and pay a fine not exceeding one hundred dollars.

**SEC. 71. [Vacancy in mayor's office—Pay of acting mayor.]**—When any vacancy shall happen in the office of mayor by death, resignation, absence

from the city, removal from office, refusal to qualify, or otherwise, the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges, and jurisdiction of the regular mayor until such vacancy be filled, or such disability removed; or in case of temporary absence, until the mayor shall return; and during that time he shall receive the same compensation that the mayor would be entitled to, the same to be deducted from the salary of the mayor.

**SEC. 72. [Jurisdiction of police judge.]**—The police judge shall have exclusive jurisdiction over, and it shall be his duty to hear and determine all offenses against the ordinances of the city, and of misdemeanors under the laws of the state arising within the limits of the city, when the fine which may be imposed does not exceed one hundred dollars, or the imprisonment three months; and he shall also have jurisdiction for the examination of offenders against the laws of the state for offenses arising within the city limits.

**SEC. 73. [Powers and duties of police judge.]**—The police judge shall be a conservator of the peace, and his court shall be open every day, except Sundays, to hear and determine any and all cases cognizable before him. No act shall be performed by him on Sunday, except to receive complaints, issue process, and take bail. He shall have power to enforce due obedience to all orders, rules, judgments, and decrees made by him; he shall have the same power as the district court in the issuance of warrants, subpoena or other process that may be necessary, and may fine or imprison for contempt offered to him while holding court, or to process issued by him, in the same manner, and to the same extent as the district court.

**SEC. 74. [Appeal to district court.]**—In all cases before the police judge arising under the ordinances of the city, wherein the fine assessed exceeds the sum of ten dollars, or the imprisonment ten days, an appeal may be taken by the defendant to the district court in and for the county in which said city is situated; but no appeal shall be allowed unless such defendant shall, within ten days, enter into recognizance, with sufficient sureties, to be approved by the judge, conditioned for the payment of the fine and costs of appeal, if it should be determined against the appellant.

**SEC. 75. [Error—Proceedings in the district court.]**—On the trial of any case in the police court, it shall be the duty of the police judge to sign any bill of exception tendered to the court during the progress of such trial; *Provided*, The truth of the matter be fairly stated; and thereupon, said exception shall be entered in the record of such trial. Any final conviction, sentence or judgment of the police court, may be examined into by the district court on writ of error, which may be allowed by such court or the judge thereof, for sufficient cause, and proceedings may be stayed as may be deemed reasonable; and the revising courts shall, in such proceedings, take judicial notice of all ordinances of the city, the judgment of whose police judge said court may be examining.

**SEC. 76. [Trial by jury.]**—Cases in the police court arising under the ordinances of the city, shall be tried and determined by the police judge without the intervention of a jury, unless the defendant demand a trial by jury; and when a demand shall be so made, the trial shall be by a jury, as in other cases in said court for misdemeanors arising under the laws of the state. In all trials by jury in the police court, challenges shall be allowed in the same manner, and for the same causes, as in the district court in cases of misdemeanors.

**SEC. 77. [Judgment and collection of fine and costs.]**—If the defendant is found guilty the police judge shall declare the punishment, which in cases arising under the ordinances of the city, shall be by fine or imprisonment, or both; and shall render judgment accordingly. It shall be a part of the judgment that the defendant stand committed until the judgment be complied with,

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SEC. 72. The police judge has no jurisdiction in case of felony, except to recognize the accused to appear before the district court for trial. 6 Neb. 102. A prosecution for the violation of a city ordinance should run in the name of "The State of Nebraska" [Const. Art. VI, sec 24] and not in the name of the city. 4 Neb. 101.

and all fines and costs are paid; and any defendant committed under the provisions of this act for a misdemeanor against the laws of this state may be discharged in the same manner as if he had been committed by the district court.

**SEC. 78. [Costs in malicious prosecutions.]**—If, upon trial under the provisions of this act it shall appear to the satisfaction of the police judge or the jury, that the prosecution was commenced without probable cause, or from malicious motives, the judge or jury trying the case shall state the name of the prosecutor or prosecutors in the finding, and shall impose the costs of prosecution upon him or them, and judgment shall be rendered against such prosecutor or prosecutors that he or they may pay such costs and stand committed until the same is paid.

**SEC. 79. [Powers of police judge—Practice and procedure.]**—The police judge shall have all the power necessary to the performance of his duties; he shall bring parties to trial without unnecessary delay; he may, upon good cause shown, postpone the trial from time to time and secure the presence of the defendant by recognizance or otherwise. In all cases not herein specially provided for, the process and proceedings in the police court shall be governed by the laws regulating proceedings in justice's courts in criminal cases.

**SEC. 80. [Costs and fees—Costs, fines and witness fees to be paid into treasury.]**—The police judge shall tax and collect the same fees and costs as are allowed a justice of the peace for similar services; jurymen and witnesses shall receive the sum of one dollar for each day attendance. In no case shall the city be liable to pay any costs or fees in cases in police courts, and all fines, fees, and costs taxed and collected by the police judge shall be paid into the city treasury at the end of each and every month, accompanied by a full and accurate statement of all fines, fees and costs taxed and collected, or taxed and uncollected. All witness fees remaining unclaimed for ninety days, after the same shall have been collected by the police judge, shall be forfeited to the city, and shall be paid to the city treasurer by the police judge, who shall report at the end of each month to the city council all witness fees collected by him and in his possession.

**[Liability on bond.]**—The police judge shall be liable upon his official bond for the prompt payment, as required by this act, of all fines, fees and costs to said city.

**SEC. 81. [Filling vacancy in office of police judge.]**—In case of a vacancy in the office of police judge, by death, resignation or otherwise, or in case of his absence, disability, or inability to perform his duty, it shall be the duty of any acting justice of the peace, within the city, who shall be designated by the mayor, to act as police judge during such vacancy, absence or inability, in the trial of causes cognizable before the said judge.

**SEC. 82. [Remission of penalty.]**—The police judge shall remit no fine or costs in any case. The mayor and council may provide by ordinance, the manner and terms on which the mayor may remit any fine, penalty or costs, imposed by the police judge, for offenses arising under the ordinances of the city.

**SEC. 83. [Books of city treasurer.]**—The city treasurer shall receive all moneys belonging to the city, and shall keep his books and accounts in such a manner as the mayor and council may prescribe; and such books and accounts shall be always subject to inspection of the mayor, members of the council and such other officer as they may designate.

**SEC. 84. [Warrants upon treasury.]**—All warrants drawn upon the treasurer must be signed by the mayor and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom payable, and no money shall be otherwise paid on account of the city, than upon such warrants so drawn, unless otherwise provided by law or ordinance.

**SEC. 85. [Treasurer's accounts and receipts.]**—The city treasurer shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He shall give every person paying money into the city treasury, a duplicate receipt therefor, specifying the date of payment, and upon what account paid; and he shall also file copies of such receipts with the clerk at the date of his monthly reports.

**SEC. 86. [Treasurer's report.]**—The treasurer shall at the end of each and every month, and oftener if required, render an account to the mayor and city council, or such officer as the council may designate, showing the state of the treasury at the date of such account, and the balance of money in the treasury. He shall also accompany such accounts with a statement of all moneys received into the treasury, and on what account, together with all warrants redeemed, and paid by him; which said warrants, with any and all vouchers held by him, shall be delivered to the clerk and filed with his said account in the clerk's office upon every day of such settlement. He shall return all warrants paid by him, stamped or marked "paid," and shall give a list of said warrants, stating the number and amount of each.

**SEC. 87. [Public moneys.]**—The treasurer shall keep all moneys in his hands, belonging to the city, separate and distinct from his own moneys; and he is hereby expressly prohibited from using, either directly or indirectly, the corporation money or warrants in his custody and keeping for his own use and benefit, or that of any other person or persons whomsoever.

**[Removal of treasurer.]**—Any violation of this provision shall subject him to immediate removal from office by the city council who are hereby authorized to declare such office vacant; and the city council shall appoint a successor, who shall hold his office for the remainder of the term unexpired of such officer so removed.

**SEC. 88. [Annual report of treasurer.]**—The treasurer shall report to the mayor and council annually, and oftener if required, at such time as may be prescribed by ordinance, a full and detailed account of all receipts and expenditures during the preceding fiscal year, and the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund from which paid, and person to whom paid, specifying also the time of payment; and all such warrants shall be examined by the finance committee at the time of making such annual report.

**SEC. 89. [Diversion of money from fund.]**—Each and every fund created by this act shall be strictly devoted to the purposes for which it was created, and shall not be diverted therefrom, and any member of the city council voting to so divert the money in any fund, shall be liable on his official bond for the amount so diverted.

**SEC. 90. [Special funds.]**—All moneys received on any special assessment shall be held by the treasurer as a special fund, to be applied to the payment of the improvement for which the assessment was made; and such money shall be used for no other purpose whatever.

**SEC. 91. [Treasurer's bond—Liability of sureties.]**—The treasurer shall be collector of taxes for the city, and shall give bonds in a sum not less than one hundred thousand dollars, to be approved by the mayor and council, for the honest and faithful performance of the duties of his office; said bond to be filed and recorded in the office of the city clerk. The treasurer and his sureties shall be liable on his official bond for all taxes and assessments not collected by him according to law, whenever such taxes or assessments remain uncollected by him, by reason of any neglect of duty, want of due diligence or failure on his part to comply with the laws and ordinances relating to the collection of taxes.

**SEC. 92. [Duties of marshal.]**—The marshal shall be the principal ministerial officer of the corporation, and may appoint one or more deputies, for whose official acts he shall be responsible; he shall by himself, or deputy, execute and return all writs and process issued by the police judge; he shall attend on the sitting of the police court and preserve order therein; and his jurisdiction, and that of his deputies in the service of process in all criminal cases, and in cases for violation of the city ordinances, shall be co-extensive with the county.

**SEC. 93. [Powers and duties of marshal.]**—He shall suppress all riots, disturbances and breaches of the peace, and to that end, may call on any person to aid him; he may pursue and arrest any person fleeing from justice in any part



of the state, and shall forthwith bring all persons by him arrested, before the police judge for trial or examination; he may receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from other places or states.

**SEC. 94. [Same—Responsibilities.]**—He shall have, in the discharge of his proper duties, like powers, be subject to like responsibilities, as sheriff in similar cases.

**SEC. 95. [Marshal shall direct police.]**—The marshal shall have the supervision and control of the police force of the city, and in that connection he shall be subject only to the orders of the mayor, and all orders of the mayor relating to the direction of the police force, shall be given through the marshal, or in his absence, the officer in charge of the police force.

**SEC. 96. [Powers and duties of policemen.]**—The policemen of the city shall have the same power as constables in arresting all offenders against the laws of the state, and in like manner may arrest all offenders against the ordinances of the city. In the discharge of their duty as policemen, they shall be subject to the immediate orders of the marshal only.

**SEC. 97. [Powers and duties not herein provided for.]**—When, by this act, the power is conferred upon the mayor and council to do and perform any act or thing, and the manner of exercising such power is not specially pointed out, the mayor and council may provide by ordinance the details necessary for the full exercise of such power.

**SEC. 98. [Additional powers and duties.]**—The duties, powers and privileges of all officers of every character, in any way connected with the city government, not herein defined, shall be defined by ordinance, and the defining by this act of the duties of any city officer, shall not preclude the mayor and council from defining by ordinance further and additional duties to be performed by any such officer.

**SEC. 99. [Defense of suits by private parties.]**—In any and all suits at law or in equity that may be brought against any city of the first class, if the said city shall refuse or neglect to defend the same, any resident taxpayer may, in behalf of the city, defend said suit at the cost of said city, not including attorney's fees.

**SEC. 100. [Exemptions—Judgments.]**—Lands, houses, moneys, debts due the city, and property and assets of every description belonging to any city governed by this act, shall be exempted from taxation, execution and sale; judgments against such city shall be paid out of the general fund, or if the council so determine, by a tax to be levied at the time of the annual levy, on all the taxable property within the city limits.

**SEC. 101. [Payment of fines and penalties into the city treasury.]**—All fines and penalties, and forfeitures, collected for offenses against the ordinances of the city or for misdemeanors against the laws of this state, committed within any city of the first class, shall, unless otherwise provided by law, be paid by the person receiving the same, to the city treasurer of said city; and any person receiving such fine, penalties or forfeitures, who shall fail to pay the same over as above provided, within thirty days after the receipt of the same by him, or within ten days after being requested by the mayor so to do, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not to exceed one thousand dollars and imprisonment not to exceed six months in the county jail.

**SEC. 102. [Salary of officers—Mayor—Police judge—Treasurer—Marshal—City clerk—Policemen—Councilmen.]**—The several officers hereinafter named, of any city of the first class, shall receive the following compensation for their services, and no more directly or indirectly, to wit: *First.* The mayor shall receive the sum of twelve hundred dollars per annum. *Second.* The police judge shall receive a salary of fifteen hundred dollars per annum. *Third.* The treasurer shall receive the sum of fourteen hundred dollars per annum, and

such further compensation, or fees, as may be provided by law, which shall be in full for his own services and the services of any deputy or assistant that may be necessary for the proper transaction of the business of his office. *Fourth.* The marshal shall receive the sum of ten hundred dollars per annum, which shall be full compensation for himself and deputy. *Fifth.* The city clerk shall receive the sum of twelve hundred dollars per annum, which shall be in full for the services of himself and deputy or assistant that may be necessary for the transaction of the business of his office, except an assistant for council meetings, which assistant may be paid extra in the discretion of the council. *Sixth.* Each policeman shall receive a sum not exceeding seventy dollars per month, to be fixed by ordinance. No policeman shall be allowed any fee or fees as a witness in any case tried in the police court. *Seventh.* The council may appropriate a sum not exceeding in the aggregate two hundred dollars in any one month, for services rendered in the preceding month by the members of the city council as such, on committee or otherwise.

SEC. 103. [No additional compensation.]—No officer shall directly or indirectly be allowed any further or greater compensation for his official services than is allowed herein, nor shall any officer named herein, take or receive therefor, directly or indirectly, any further or greater compensation than is provided as aforesaid.

SEC. 104. [Penalty for taking or procuring extra compensation.]—If any such officer shall violate any of the foregoing provisions of this act, or if any member of the council shall vote for any further allowance to any officer whose salary is fixed by this act, or to the members of the council, he shall be deemed guilty of a misdemeanor in office, and upon conviction thereof in a court of competent jurisdiction, shall be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail not exceeding one year; and he shall moreover be removed from office by the court rendering judgment of conviction against him.

SEC. 105. [No officer to be interested in contracts—Penalty for bribery.]—Any officer of the city or member of the city council who shall, by himself or agent, become a party to, or in any way interested in any contract, work or letting under the authority and by the action of the city council, or who shall either directly or indirectly, by himself or other party, accept or receive any valuable consideration or promise for his influence or vote, and every person who shall offer such valuable consideration to such officer for his influence or vote, shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars.

SEC. 106. [Repealing clause.]—That an act to incorporate cities of the first class, approved March 28, 1873; an act amendatory thereof, approved February 23, 1875; an act amendatory thereof, approved February 13, 1877; an act amendatory thereof approved February 27, 1879, and all acts and parts of acts inconsistent herewith, be and the same are hereby repealed.

SEC. 107. [Emergency clause. Act took effect March 1, 1881.]

#### TAXES FOR SEWERS ALREADY CONSTRUCTED.

SEC. 108. [Sewer debt tax.]—That in cities of the first class the mayor and council shall levy a tax in each year in addition to all other taxes, in the manner provided by law for the levy of other taxes, of one and one-half mills on the dollar of the assessed valuation of all the taxable property in said city to pay all indebtedness heretofore incurred for the construction and maintenance of any main sewer or sewers or branches thereof and draw warrants therefor on the fund so provided for; *Provided,* That before any payment shall be made under the provisions of this act the value of said sewers shall be ascertained by the inspection and appraisement of three disinterested experts who shall be appointed for

SEC. 108. "An act to provide for the levy of a tax in cities of the first class for the payment of sewers already constructed." Approved Feb. 28. Took effect June 1, 1881.

that purpose, one of whom shall be selected by the mayor and council of such city, within which such sewer or sewers may have been constructed, one by the contractors who constructed such sewer or sewers, and the third to be chosen by the two experts so selected, who shall first be sworn to make a true and impartial appraisement of the value of such sewer or sewers, upon actual inspection and measurement, and who shall return their appraisement in writing to the mayor of such city, and said appraisement being so returned, and said sewer or sewers accepted by said mayor and council, the same shall be paid with interest thereon at the rate provided by law when such indebtedness accrued: *Provided further*, That in no case shall payment be made in excess of the contract price and interest thereon, from the date of such accrued indebtedness, under which such sewer or sewers may have been constructed. [1881 § 1, chap. 18.]

#### RATES OF TOLL.

SEC. 109. [Toll bridges.]—That the mayor and council in any city of the first class, shall have power to license and regulate the keeping of toll bridges within or terminating within the city, for the passage of persons and property over any river passing wholly or in part within or running by and adjoining the corporate limits of any such city, to fix and determine the rates of toll over any such bridge, or over the part thereof within the city, and to authorize the owner or owners of any such bridge to charge and collect the rates of toll so fixed and determined, from all persons passing over or using the same. [1871, 26. G. S. 136.]

### CHAPTER 14.—CITIES OF THE SECOND CLASS AND VILLAGES.\*

#### CITIES OF THE SECOND CLASS.

SECTION 1. [Inhabitants required.]—All cities, towns, and villages containing more than fifteen hundred and less than twenty-five thousand inhabitants shall be cities of the second class, and be governed by the provisions of this chapter, unless they shall adopt a village government as hereinafter provided. [1879, 193. Amended and took effect Feb. 14, 1881.]

SEC. 2. [Wards.]—Each city of the second class shall be divided into not less than two nor more than six wards, as may be provided by ordinance of the city council thereof, and each ward shall contain, as nearly as practicable, an equal number of legal voters, and an area as equal to each other as practicable.

SEC. 3. [Council.]—The council of each city of the second class shall consist of not less than four nor more than twelve citizens of said city, who shall be qualified electors and tax payers under the constitution and laws of the state of Nebraska.

SEC. 4. [Councilmen.]—Each ward in each city shall have at least two councilmen, who shall be chosen by the qualified electors of their respective wards, and who shall serve for two years and until their successors shall be elected and qualified; and no person shall be eligible to the office of councilman who is not at the time of his election an actual resident of the ward for which he is elected, and a qualified elector under the constitution and laws of the state of Nebraska; and if any councilman shall remove from the ward for which he is elected, his office as a councilman shall thereby become vacated; *Provided*, At the first general city election under this chapter, there shall be two councilmen elected from each ward, the one receiving the greatest number of votes shall serve for two years, and the one receiving the next highest number of votes shall serve for one year, and one councilman for each ward at each annual election thereafter.

SEC. 109. "An act empowering the mayor and council in cities of the first class, to license and regulate the keeping of toll bridges; to fix the rates of toll, and to authorize the collection of the same." Laws 1871, 26. G. S. 136. Took effect Feb. 8, 1871. The signature of the governor does not appear in the enrolled act.

\*NOTE.—"An act to provide for the organization, government and powers of cities and villages;" passed March 1, 1879, and taking effect September 1, 1879. [Laws pp. 193-237.] The act is constitutional. 10 Neb. 206. Nor does it repeal ordinances existing at the time of its passage. 10 Neb. 538.

Whenever there shall be a tie in the election of councilmen, it shall be determined by lot by judges of election of the ward in which it shall happen.

SEC. 5. [**Meetings.**].—Regular meetings of the city council shall be held at such times as the council may provide by ordinance.

SEC. 6. [**Officers.**].—At the time of holding the general city election in each year, there shall be elected a mayor, a clerk, a treasurer, a city engineer, and the councilmen hereinbefore provided for, and a police judge shall be elected at each biennial city election; and the mayor with the consent of the council may appoint a city attorney and an overseer of streets, who shall hold their offices for one year unless sooner removed by the mayor with the advice and consent of the council. The mayor, by and with the consent of the council, shall appoint such a number of regular policemen as may be necessary, and may also appoint special policemen from time to time as exigencies arise. All police officers appointed by the mayor and council, in accordance herewith, shall be removable at any time by the mayor. [Amended and took effect March 2, 1881.]

SEC. 7. [**Salaries.**].—The salaries of all officers of the city shall be fixed by ordinance, not exceeding the following amounts respectively; clerk, three hundred (\$300) dollars per year; treasurer, three hundred (\$300) dollars per year; city engineer, four dollars (\$4.00) per day for actual services, but not exceeding three hundred (\$300) dollars per year. Overseers of streets, two [dollars] (\$2.00) per day for actual services, but not exceeding three hundred dollars (\$300) per year; city attorney, two hundred and fifty dollars (\$250) per year; chief of police, sixty-five dollars (\$65) per month, which shall include his compensation as overseer of streets; policemen, fifty-five dollars (\$55) per month; mayor, two hundred dollars (\$200) per year, and councilmen, each the sum of fifty dollars (\$50) per year. All other officers and employees of the city shall receive such compensation as the mayor and council may fix at the time of their appointment or employment. [Amended and took effect March 2, 1881.]

SEC. 8. [**Fees of police judge.**].—The police judge shall receive the same fees as justices of the peace for similar services.

SEC. 9. [**Qualifications.**].—All officers shall be qualified electors and tax payers and reside within the limits of the city.

SEC. 10. [**Duties of mayor.**].—The mayor shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided, and none other, and shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and of this chapter are complied with.

SEC. 11. [**Veto power.**].—The mayor shall have power to veto or sign any ordinance passed by the city council; *Provided*, That any ordinance vetoed by the mayor may be passed over his veto by a vote of two-thirds of the members of the council elected, notwithstanding the veto; and should the mayor neglect or refuse to sign any ordinance, and return the same with his objections, in writing, at the next regular meeting of the council, the same shall become a law without his signature.

SEC. 12. [**Mayor's message.**].—He shall, from time to time, communicate to the city council such information, and recommend such measures as, in his opinion, may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort, and general prosperity of the city.

SEC. 13. [**Special meeting of council.**].—The mayor, or any three councilmen, shall have power to call special meetings of the city council, the object of which shall be submitted to the council in writing, and the call, and object, as well as the disposition thereof, shall be entered upon the journal by the clerk.

SEC. 14. [**Reports of officers.**].—The mayor shall have the power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers, and to make reports to the council in writing, touching any subject or matter he may require pertaining to his office.

**SEC. 15. [Jurisdiction of mayor.]**—The mayor shall have such jurisdiction as may be vested in him by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, excepting taxation, within one-half mile of the corporate limits of said city.

**SEC. 16. [Vacancy.]**—In case of any vacancy in the office of mayor, or in case of his absence or disability, the president of the council, for the time being, shall exercise the office of mayor, until such vacancy be filled, or such disability be removed; or in case of temporary absence, until the mayor shall return.

**SEC. 17. [Posse comitatus.]**—The mayor is hereby authorized to call on every male inhabitant in the city, over eighteen years of age and under the age of fifty years, to aid in enforcing the laws.

**SEC. 18. [Reprieves—Pardons.]**—The mayor shall have power to remit fines and forfeitures, to grant reprieves and pardons for all offenses arising under the ordinances of the city.

**SEC. 19. [Policemen.]**—The policemen of the city shall have power to arrest all offenders against the laws of the state, or of the city, by day or by night, in the same manner as the sheriff or constable, and keep them in the city prison or other place, to prevent their escape, until trial can be had before the proper officer.

**SEC. 20. [City engineer.]**—The city engineer shall make estimates of the cost of labor and materials which may be done or furnished by contract with the city, and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, building of culverts, sewers, bridges, curbing and gutters, and the improvement of streets and the erection and repair of buildings, and shall perform such other duties as the council may require. Before the city council shall make any contract for building bridges or sidewalks, or for any work on the streets, or for any other work or improvement, an estimate of the cost thereof shall be made by the city engineer and submitted to the council, and no contract shall be entered into for any work or improvement for a price exceeding such estimate; and in advertising for bids for any such work the council shall cause the amount of such estimate to be published therewith.

**SEC. 21. [Overseer of streets.]**—The overseer of streets shall, subject to the orders of the mayor and council, have general charge, direction, and control of all work on the streets, sidewalks, culverts, and bridges of the city, and shall perform such other duties as the council may require.

**SEC. 22. [Police judge.]**—The police judge shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of the city, and jurisdiction concurrent with that which is or may be conferred upon justices of the peace, of misdemeanors under the laws of the state, arising within the limits of the city, and shall also have jurisdiction for the examination of offenders against the laws of the state, for offenses arising within the limits of the city.

**SEC. 23. [Complaint.]**—Whenever complaint shall be made to the police judge, on oath or affirmation of any person, that an offense has been committed, of which the police judge has jurisdiction, said judge shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the sheriff or a constable of the county, or any policeman of the city, or by some person specially appointed by writing, indorsed on the process by the police judge for that purpose, and whose return shall be made under oath. [Amended, and took effect March 2, 1881.]

**SEC. 24. [Fines.]**—All fines and penalties collected, arising from a breach of ordinances of the city, shall be paid to the city treasurer; and all fines and penalties collected, arising from misdemeanors under the laws of the state, shall be paid to the county treasurer.

**SEC. 20.** Before any contract for grading is let an ordinance must be passed therefor, and the contract let to the highest bidder, after publication of notice and fair competition. 9 Neb. 358. The estimate is not required in case of a contract to light the city with gas. Id. 340.

**SEC. 25. [Proceedings upon arrest.]**—When any person shall be brought before the police judge upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

**SEC. 26. [Recognizance.]**—Upon good cause shown, the police judge may postpone the trial of the case to a certain day, in which case he shall require the defendant to enter into recognizance with sufficient security, conditioned that he will appear before the said judge at the time and place appointed, then and there to answer the complaint alleged against him.

**SEC. 27. [When judge has no jurisdiction.]**—In case of the breach of any recognizance entered into as aforesaid, the same shall be certified to the district court of the proper county, to be proceeded upon according to law; if in the progress of any trial before the said judge it shall appear that the accused ought to be put upon his trial for an offense not cognizable before the said judge, he shall immediately stop all further proceedings before him, and proceed as in other cases exclusively cognizable before the district court.

**SEC. 28. [Witnesses.]**—It shall be [the] duty of said judge to summon all persons, whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance, by attachment if necessary, and all witnesses shall receive the sum of fifty cents for each days attendance.

**SEC. 29. [Trials.]**—Cases in the police court, for violations of city ordinances, shall be tried and determined by the police judge without the intervention of a jury; cases of misdemeanors under the statutes of the state shall be tried by the police judge alone, unless the defendant demand a jury, and if a jury be demanded, the case shall be tried by a jury of six competent men, unless a smaller number be agreed to by the defendant, to be selected in the manner provided by law for selecting jurors in justice's courts, and the trial of all cases before said police judge shall be conducted in all respects, not herein otherwise provided, in like manner as criminal cases before justices of the peace. Jurors in the police court shall receive the same fees as jurors in the justice's court, to be taxed as other costs are taxed in the case. [Amended and took effect March 2, 1881.]

**SEC. 30. [Punishment.]**—If the defendant be found guilty, the police judge shall declare and assess the punishment and render judgment accordingly. It shall be part of the judgment that the defendant stand committed until the judgment be complied with; *Provided*, That the defendant shall have the right to produce before said police judge one or more sureties to the satisfaction of said judge, which said sureties shall with the defendant confess a judgment for the amount of the fine or penalty imposed, and costs of suit, and said judge shall enter such confession or judgment upon his docket and render judgment accordingly, in the name of the state of Nebraska, against them for the amount of such fine and costs; and if said judgment be not paid within ninety days from the date of such confession and entering of judgment, said police judge shall issue execution and collect the amount of said fine or penalty and costs in the manner provided by law for collecting judgments by execution [in] justice's court. [Id.]

**SEC. 31. [Work by prisoners.]**—Whenever the defendant is sentenced to imprisonment for the violation of a city ordinance, he shall be put to work for the benefit of the city, under direction of the mayor, for the term of his imprisonment; and when committed for the non-payment of a fine or costs for the violation of any ordinance, he shall also be put to work for the benefit of the city, and shall be credited on such fine and costs \$1.50 per day, for each day he shall work.

**SEC. 32. [How prisoner discharged.]**—Any defendant committed under the provisions of this chapter for a misdemeanor arising under the laws of this state, may be discharged in the same manner as if he had been committed by the district court.

**SEC. 33. [Proceedings, how governed.]**—In all cases not herein especially provided for, the process, proceedings, and trial before the judge shall be governed by laws regulating proceedings in justices' courts in criminal cases.

**SEC. 34. [Continuance—Notice to witnesses.]**—When a trial shall be

continued by a judge, it shall not be necessary to summons any witness who may be present at the continuance, but the judge shall verbally notify such witnesses, as either party may require, to attend before him to testify before him in the case on the day set for trial, which verbal notice shall be as valid as a summons.

**SEC. 85. [Conservator of peace—Court, when open.]**—The police judge shall be a conservator of the peace, and his court shall be open every day, except Sunday, to hear, try, and determine all cases cognizable before him, and he shall have power to bring parties forthwith to trial.

**SEC. 86. [Appeals.]**—Appeals may be taken from the judgments of the police judge in the same manner as appeals are taken from the judgments of the justices of the peace in criminal cases.

**SEC. 87. [Vacancy.]**—In case of a vacancy in the office of police judge by death, resignation or otherwise, or in case of the absence, disability or personal interest of said judge, such fact being shown by affidavit, the mayor shall, on notice thereof, appoint some justice of the peace, holding and exercising the duties of his office within the corporate limits of such city, to act as police judge during such vacancy, absence [or] disability of said police judge. [Amended and took effect Mar. 2, 1881.]

**SEC. 88. [Contempts.]**—The police judge shall have power to enforce due obedience to all orders, rules, judgments, and decrees made by him, and may fine or imprison for contempt offered to such judge whilst holding his court, or to process issued by him, in the same manner, and to the same extent as the district courts.

**SEC. 89. [Ordinances.]**—Cities of the second class, in their corporate capacities, are authorized and empowered to enact ordinances for the following purposes in addition to the other powers granted by this act. [Amended Feb. 28. Took effect June 1, 1881.]

**I. [Disorderly houses.]**—To restrain, prohibit, and suppress billiard tables and bowling alleys kept for public uses, houses of prostitution and unlicensed tipping shops, gambling and gambling houses, and other disorderly houses and practices, and all kinds of public indecencies, and all lotteries or fraudulent devices and practices for the purpose of obtaining money or property.

**II. [Contagious diseases.]**—To make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws for that purpose, and to enforce the same within five miles of the city.

**III. [Hospitals.]**—To erect, establish and regulate hospitals, and to provide for the government and support of the same.

**IV. [Health—Water.]**—To make regulations to secure the general health of the city, and to prevent and remove nuisances, and to provide the city with water.

**V. [Police.]**—To establish a night watch and police, and to define the duties and powers of the same.

**VI. [Lights.]**—To provide for and regulate the lighting of the streets, and the erection of lamp posts.

**VII. [Markets.]**—To purchase, hold and own grounds for, and to erect and establish market houses and market places, and to regulate markets and market places.

**VIII. [Public buildings.]**—To provide for the erection and government of any useful or necessary buildings for the use of the city.

**IX. [Sunday.]**—To prevent any desecration of the Sabbath day, commonly called Sunday, and to prohibit public amusements, shows, exhibitions, or ordinary business pursuits upon said day.

**X. [Disorderly conduct.]**—To prevent intoxication, fighting, quarreling, dog-fights, cock-fights and all disorderly conduct.

**XI. [Places of amusement.]**—To prevent the use of any opera house, city hall, church, or other building resorted to by the people for worship, amusement, or for public assemblages, unless such opera house, city hall, church, or other building shall be provided with suitable, ample and sufficient fire escapes, and suitable, ample and sufficient means of exit and entrance.

**XII. [License places of amusement.]**—To regulate, license, tax and suppress places of amusement, and to revoke the licenses therefor, when such places are not provided with sufficient and ample means of exit and entrance, and when the same are not safe for such uses, or when the licensee has been convicted of any violation of the ordinances in relation to such places, and to declare from time to time when such place or places are unsafe for such uses.

**XIII. [Buildings—Fire escapes.]**—To prescribe the thickness, strength and manner of constructing stone, brick and other buildings, and to prescribe and direct the number and construction of means of exit and entrance, and the construction of fire escapes.

**XIV. [Runners.]**—To license, tax, and regulate runners for stages, cars, hotels, public buildings, or other things or persons.

**XV. [Peddlers and public exhibitions.]**—To license, tax, suppress, regulate and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatrical and other exhibitions, shows and other amusements, and to revoke such licenses at pleasure.

**XVI. [Intoxicating liquors.]**—To forbid, punish and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor to any minor, apprentice, or insane, idiotic or distracted person, habitual drunkard or person in the habit of getting intoxicated.

**XVII. [Fire places.]**—To prevent the dangerous construction and condition of chimneys, fire places, hearths, stoves, stove pipes, ovens, boilers, apparatus used in and about any building or manufactory, and to cause the same to be removed or placed in a safe condition as the council may prescribe, when by it considered dangerous. To regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires. To prevent the deposit of ashes in unsafe places, and to cause all such buildings and inclosures as may be in a dangerous state to be put in a safe condition.

**XVIII. [Explosive substances.]**—To regulate and prevent storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitro-glycerine, petroleum, or any of the productions thereof and other material, and the use of lights in stables and shops and other places, and the building of bonfires; also to regulate, prohibit, and restrain the use of fire works, fire crackers, roman candles, sky rockets, and other pyrotechnic displays.

**XIX. [Cruelty to animals.]**—To prohibit and punish cruelty to animals.

**XX. [Street traffic.]**—To regulate traffic and sales upon the streets, sidewalks and public places.

**XXI. [Obstructing streets.]**—To regulate and prevent the use of streets, sidewalks, and public grounds for signs, sign-posts, telegraph or other poles, racks, posting of hand bills and advertisements.

**XXII. [Sidewalks.]**—To regulate the use of sidewalks and all structures thereunder.

**XXIII. [Obstructing streets.]**—To regulate and prevent the moving of buildings through or upon the streets, and to regulate and prohibit the piling of building material or any excavation or obstruction of the streets.

**XXIV. [Railroads.]**—To provide for and change the location, grade and crossing of any railroad.

**XXV. [Same.]**—To require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads. To compel any railroad to raise or lower their railroad tracks to conform to any grade which may at any time be established by such city or village, and where such tracks run lengthwise of any street, alley or highway, to keep their railroad tracks on a level with the street surface, and so that such tracks may be crossed at any place on such alley or highway. To compel and require railroad companies to make and keep open streets, and to keep in repair ditches, drains, sewers, and culverts along and under their railroad tracks, so that filthy or stagnant pools of water cannot stand on their grounds or right of



way, and so that the drainage of adjacent property or streets shall not be impeded.

**XXVI. [Drains.]**—To construct and keep in repair culverts, drains, sewers and cesspools, and to regulate the use thereof.

**XXVII. [Funding bonds.]**—To issue bonds in place of, or to supply means to meet its maturing bonds, or for the consolidation or funding of the same.

**XXVIII. [Fire apparatus.]**—To procure fire engines, hooks, ladders, buckets, and other apparatus, and organize fire engine, hook and ladder, and bucket companies, and to prescribe rules of duty and the government thereof, with such penalties as the council may deem proper, not exceeding one hundred dollars, and to make all necessary appropriations therefor.

**XXIX. [President of council.]**—To elect one of their own body who shall be styled the "President of the Council," and who shall preside at all meetings of the council in the absence of the mayor; and in the absence of the president to elect one of their own body to occupy his place temporarily, and who shall be styled "Acting President of the Council;" and the president and acting president, when occupying the place of the mayor, shall have the same privileges as other members of the council; and all acts of the president or acting president, while so acting, shall be as binding upon the council and upon the city as if done by the mayor. [Amended Feb. 28. Took effect June 1, 1881.]

**SEC. 39 a. [Ordinances to continue in force.]**—Section thirty-nine of "an act to provide for the organization, government, and powers of cities and villages," approved March 1st, 1879, be and the same is hereby repealed; *Provided*, That all ordinances passed heretofore and rights accrued thereunder, under the powers contained in said section shall be and continue uninterruptedly in full force. [Id. § 2.]

#### VILLAGES.

**SEC. 40. [Constitution and incorporation.]**—Any town or village containing not less than two hundred nor more than fifteen hundred inhabitants, now incorporated as a city, town, or village, under the laws of this state, or that shall hereafter become organized pursuant to the provisions of this act, and any city of the second class which shall have adopted village government as provided by law, shall be a village, and shall have the rights, powers, and immunities herein-after granted, and none other, and shall be governed by the provisions of this subdivision; *Provided*, That cities of the second class heretofore incorporated, and containing not more than fifteen hundred inhabitants, shall continue to be and exercise the powers of cities of the second class, and the officers thereof shall continue to exercise the powers conferred herein upon officers of such cities, until the first general election held therein, and the qualifications of village officers elected at said election; *Provided further*, That whenever a majority of the taxable inhabitants of any town or village, not heretofore incorporated under any law of this state, shall present a petition to the county board of the county in which said petitioners reside, praying that they may be incorporated as a village, designating the name they wish to assume and the metes and bounds of the proposed village; and if such county board, or a majority of the members thereof, shall be satisfied that a majority of the taxable inhabitants of the proposed village have signed such petition, and that inhabitants to the number of two hundred or more are actual residents of the territory described in the petition, the said board shall declare the said proposed village incorporated, entering the order of incorporation upon their records, and designating the metes and bounds thereof; and thereafter the said village shall be governed by the provisions of this act applicable to the government of villages. And the said county board shall, at the time of the incorporation of said village, appoint five persons having the qualifications provided in section forty-two of this act, as trustees, who shall hold their offices and perform all the duties required of them by law, until the election and qualification of their successors at the time and in the manner provided in this act. [Amended and took effect Feb. 25, 1881.]

SEC. 41. [**Board of trustees.**].—The corporate powers and duties of every village shall be vested in the board of trustees, to consist of five members.

SEC. 42. [**Qualifications of trustees.**].—Any person may be a trustee who shall have attained the age of twenty-one years, and shall be a male citizen of the United States, or declared his intention to become such, who shall have been an inhabitant and tax-payer of the village at the time of his election, and resided therein for three months next preceding; and every trustee so elected shall hold his office for the term of one year, and until a successor is elected and qualified.

SEC. 43. [**Oath of office.**].—Every trustee, before entering upon the duties of his office, shall take an oath to support the constitution of the United States, and the constitution of the state of Nebraska, and faithfully and impartially to discharge the duties of his office; and every board of trustees shall assemble within twenty days after their appointment or election, and choose a chairman from their number. The board of trustees shall by ordinance fix the time and place of holding their stated meetings, and may be convened at any time by their chairman.

SEC. 44. [**Quorum.**].—At all meetings of the board a majority of the trustees shall constitute a quorum to do business; a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the board of trustees by ordinance may have previously prescribed.

SEC. 45. [**Journal.**].—The board of trustees shall keep a journal of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken and entered on the journal, on any question or ordinance, and the proceedings shall be public.

SEC. 46. [**General powers.**].—Such board of trustees shall have power to pass by-laws and ordinances to prevent and remove nuisances, to prevent, restrain, and suppress bawdy houses, gambling houses, and other disorderly houses within the limits of such village; to restrain and prohibit gambling; to provide for licensing and regulating theatrical and other amusements within such village; to establish night watches; to provide pest houses; to prevent the introduction and spread of contagious diseases; to establish and regulate markets; to erect and repair bridges; to erect, repair, and regulate wharves, and the rates of wharfage; to regulate the landing of steamboats, rafts, and other water craft; to provide for the inspection of lumber, building materials and provisions to be used or offered for sale in such village, or to be exported therefrom; to require and regulate the planting and protection of shade trees in the streets, and the building of stairways, railways, doorways, awnings, hitching posts and rails, lamp posts, awning posts, and all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks of such village; and in addition to the special powers herein conferred and granted, maintaining the peace, good government and welfare of the town or village, and its trade, commerce, and manufactories, and to enforce all ordinances by inflicting penalties upon inhabitants, or other persons, for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable, with costs, together with judgment of imprisonment until the amount of said judgment and costs shall be paid.

SEC. 47. [**Officers.**].—Such board of trustees shall appoint a clerk, treasurer and attorney.

SEC. 48. [**Compensation of officers.**].—The trustees shall receive no compensation. The compensation of the other officers shall be fixed by ordinance but not exceeding the following sums, respectively, in any one year: The clerk \$150.00 per year. The treasurer \$150.00 per year. The attorney \$150.00 per year.

SEC. 49. [**By-laws and ordinances.**].—The chairman of such board of trustees shall cause to be printed and published the by-laws and ordinances of the board, for the information of the inhabitants, and cause the same to be carried into effect, and in case of the absence of the chairman of the board from any meeting of the board of trustees, such board shall have power to appoint a chair-

man, *pro tempore*, who shall, for the time being, exercise and have the powers, and perform the same duty, as the regular chairman.

SEC. 50. [Notice of election.]—The board of trustees shall give public notice of the time and place of holding each election; said notice to be given not less than ten nor more than twenty days previous to the election.

SEC. 51. [Vacancies.]—If, on any day appointed for holding any election under the provisions of this chapter, any of the judges or clerks of election shall fail to attend, the electors present may fill such vacancies from among the qualified electors present.

SEC. 52. [Jurisdiction of justices of the peace.]—In counties not under township organization justices of the peace of any precinct in which any village or any part thereof may be situated, and in counties under township organization, justices of the peace elected in said village, or from the township in which any village of less than five hundred inhabitants is situated, shall have jurisdiction to hear, try and determine all offenses against the general ordinances of such village, and for that purpose may issue warrants for the arrest of any alleged offender, upon information under oath as in other cases; and upon the arrest of the defendant by the sheriff or any constable of the county, shall proceed thereon in all respects in the same manner and with the same powers as against persons charged with a misdemeanor under the general laws of the state; and the justice by or before whom such proceedings shall be had, and the officer making such arrest, shall be entitled to the same fees and costs, to be collected in the same manner as in cases of prosecutions for misdemeanors.

#### ADOPTION OF VILLAGE GOVERNMENT.

SEC. 53. [Change from city to village government.]—Whenever any city of the second class, containing more than fifteen hundred inhabitants, desires to discontinue its organization as a city, and organize as a village, and one-fourth of the legal voters of such city shall petition the city council, the council shall cause to be published, for at least thirty days, a notice stating that the question of adopting village government will be submitted at the next annual city election. The form of the ballot shall be "For organization as a village," and "Against organization as a village;" and at the same election the qualified voters shall also vote for five trustees for the village. If a majority of the votes cast are "For organization as a village," then such city shall within 60 days after such election be and become a village, and be governed under the provisions of the law relating to villages, unless it shall at some future annual election adopt a city government, in the manner provided herein for its adoption of village government.

SEC. 54. [Duties of trustees.]—If village government shall have been adopted as aforesaid, the board of trustees shall at the expiration of sixty days from said election enter upon the duties of their offices, and all books, papers, records, money and property of such city shall be delivered over to the board of trustees, and the authority of the city council and all city officers shall cease from and after the taking effect of village government in such city.

SEC. 55. [Ordinances to remain in force.]—All ordinances of the city shall remain and be in full force in the village, until amended or repealed by the board of trustees, and the board shall provide for the payment of the city indebtedness and levy necessary taxes therefor, as if the same had been incurred by the village.

#### GENERAL PROVISIONS.

SEC. 56. [Corporate powers.]—Cities of the second class and villages governed by this chapter, shall be bodies corporate and politic, and may sue and be sued; contract or be contracted with; acquire, hold and convey property real or personal; have a common seal, which they may change and alter at pleasure; and such other powers as may be conferred by law; *Provided*, That real property shall only be conveyed by the proper authorities of such city or village when so authorized by a vote of the electors thereof.

**Sec. 57. [Corporate name.]**—The corporate name of each city or village governed by this chapter shall be the "city (or village) of \_\_\_\_\_," and all and every process and notice whatever affecting such corporation, shall be served upon the mayor or chairman of board of trustees, and in his absence, upon the clerk, or in the absence of such officers, then by leaving a certified copy at the office of the clerk.

**Sec. 58. [Rights and privileges preserved.]**—All rights and privileges which have accrued to any city, town or village held by any officer of such corporation, under or by virtue of any act of the legislature of the territory or state of Nebraska, or any act of the congress of the United States, before the taking effect of this chapter, are hereby preserved to such cities, towns or villages, and all of its said trusts, rights and privileges, shall be transmitted to and be vested in such latter corporation, and all actions heretofore commenced by or against any city or town which shall be or become a city or village under the provisions of this chapter, shall be in no manner affected by this act, but all such actions shall be continued to final judgment and satisfaction as if this chapter had not been passed.

**Sec. 59. [Ordinances.]**—The style of all ordinances shall be:—"Be it ordained by the mayor and council of the city of \_\_\_\_\_," or "the chairman and board of trustees of the village of \_\_\_\_\_." And all ordinances of a general nature shall, before they take effect, be published within one month after they are passed in some newspaper published in said city or village, but if no paper be published in said city or village, then by posting up, one in each of three public places in said city or village, a written or printed copy thereof, or by publishing the same in book or pamphlet form; *Provided, however,* That in case of riot, infectious or contagious diseases, or other impending danger, requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor or chairman of the board of trustees, posted in at least three of the most public places in the city or village. The passage, approval and publication, or posting of said ordinances, shall be sufficiently proved by a certificate under seal of the city or village from the clerk thereof, showing that such ordinance was passed and approved, and when and in what paper the same was published, or when and by whom, and where the same was posted up. And when ordinances are printed in book or pamphlet form purporting to be published by authority of the board of trustees or city council, the same need not [be] otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances as of the dates mentioned in such book or pamphlet in all courts, without further proof. [Amended and took effect Mar. 2, 1881.]

**Sec. 60. [Election.]**—On the first Tuesday of April of each year, an election shall be held in each city and village governed by this chapter, for officers as in this chapter provided, all of which officers (except councilmen) shall be elected and hold their respective offices for the term of one year, and until their successors are elected and qualified; at which election the qualified voters of each city may cast their ballots between the hours of nine o'clock A.M. and seven o'clock P.M.

**Sec. 61. [Qualification of electors.]**—All qualified electors of this state, who shall have resided within the limits of any city of the second class or village for three months preceding any election therein, shall be entitled to vote at all city and village elections.

**Sec. 62. [Certificates of election.]**—Certificates of election for all officers of cities and villages shall be made out under the corporate seal by the city council or board of trustees, at their first meeting after any election of such officers.

**Sec. 63. [Duties of clerk.]**—The city or village clerk shall have the custody of all laws and ordinances, and shall keep a correct journal of the proceedings of the council or board of trustees; he shall also keep a record of all outstanding bonds against the city or village, showing the number and amount of each, for and to whom the said bonds were issued; and when any bonds are purchased, or paid, or cancelled, said record shall show the fact, and in his annual

report he shall describe particularly the bonds issued and sold during the year, and the terms of sale, with each and every item of expense thereof; he shall also perform such other duties as may be required by the ordinances of the city.

**SEC. 64. [Duties of treasurer.]**—The treasurer of each city and village shall be the custodian of all money belonging to the corporation; he shall keep a separate account of each fund or appropriation, and the debits and credits belonging thereto; he shall give every person paying money into the treasury a receipt therefor specifying the date of payment, and on what account paid; he shall also file copies of such receipts with his monthly reports; he shall, at the end of each and every month, and as often as may be required, render an account to the city council or board of trustees, under oath, showing the state of the treasury at the date of such account, and the balance of money in the treasury; he shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him; which said warrants, with any and all vouchers held by him, shall be filed with his said account in the clerk's office; and if said treasurer neglect or fail, for the space of ten days from the end of each and every month, to render his said account, his office shall be declared vacant, and the city council or board of trustees shall fill the vacancy by appointment until the next election for city or village officers.

**SEC. 65. [Depositing money.]**—The treasurer may be required to keep all money in his hands belonging to the corporation, in such place or places of deposit as may be provided by ordinances, but no such ordinance shall be passed by which the custody of such money shall be taken from the treasurer, and deposited elsewhere than in some regularly organized bank, nor without a bond to be taken from such bank, in such penal sum and with such security as the council or board of trustees shall direct and approve, sufficient to save the corporation from any loss; but such penal sum shall not be less than the estimated receipts for the current year from taxes and special assessments levied and to be levied by the corporation.

**SEC. 66. [Warrants.]**—All warrants drawn upon the treasurer must be signed by the mayor or chairman, and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable, and the person to whom payable, and for what particular object; no money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount levied and appropriated to the fund upon which it is drawn, and the amount already expended of such fund.

**SEC. 67. [Attorney.]**—The city or village attorney shall be the legal adviser of the council or board of trustees. He shall commence, prosecute and defend all suits and actions necessary to be commenced, prosecuted or defended on behalf of the corporation or that may be ordered by the council or board of trustees; and when requested, shall attend meetings of the council or board and give them his opinion upon any matter submitted to him either orally or in writing as may be required.

**SEC. 68. [Contracts.]**—No officer of any city or village shall be interested directly or indirectly in any contract to which the corporation or any one for its benefit is a party; and any such interest in any such contract shall avoid the obligation thereof, on the part of such corporation; nor shall any officer receive any pay or perquisites from the city other than his salary as fixed by ordinance and this chapter; and neither the city council or board of trustees shall pay or appropriate any money or other valuable thing to any person not an officer, for the performance of any act, service or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of such corporation.

**SEC. 69. [Additional powers.]**—In addition to the powers hereinbefore granted cities and villages under the provisions of this chapter, each city and vil-

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SEC. 66. Warrants legally issued were exchanged for illegal funding bonds. Held, the holder could recover the value of the warrants. 10 Neb. 401.

lage may enact ordinances or by-laws for the following purposes: [Amended and took effect March 2, 1881.]

I. **[General taxes.]**—To levy taxes for general revenue purposes, not to exceed ten mills on the dollar in any one year on all property within the limits of said cities and villages, taxable according to the laws of the state of Nebraska, the valuation of such property to be ascertained from the books or assessment rolls of the assessors of the proper precinct or township.

II. **[Special assessments.]**—To levy any other tax or special assessment authorized by law.

III. **[Streets and sewers.]**—To provide for the grading and repairs of any street, avenue, or alley, and the construction of bridges, culverts and sewers, and shall defray the expenses of the same out of the general funds of such city or village, not exceeding two mills of the levy for general purposes, but no street shall be graded except the same be ordered to be done by the affirmative vote of two-thirds of the city council or trustees.

IV. **[Streets and sidewalks.]**—To construct sidewalks, to curb, pave, gravel, macadamize and gutter any highway or alley therein, and to levy a special tax on the lots and parcels of land fronting on such highway or alley to pay the expense of such improvement. But unless a majority of the resident owners of the property, subject to assessment for such improvement, petition the council or trustees to make the same, such improvements shall not be made until three-fourths of all the members of such council or trustees shall, by vote, assent to the making of the same.

V. **[Same.]**—To repair sidewalks, and to assess the expense thereof on the property in front of which such repairs are made.

VI. **[Same.]**—To provide for the laying of temporary plank sidewalks upon the natural surface of the ground, without regard to grade, on streets not permanently improved, at a cost not exceeding fifty cents a lineal foot, and to provide for the assessment of the (cost) thereof on the property in front of which the same shall be levied.

VII. **[Assessments, how made.]**—Assessments made under the provisions of the last three preceding subdivisions of this section shall be made and assessed in the following manner: *First.* Such assessment shall be made by the council or board of trustees at a special meeting, by a resolution fixing the valuation of such lot assessed, taking into account the benefits derived or injuries sustained in consequence of such contemplated improvements, and the amount charged against the same, which with the vote thereon by yeas and nays shall be spread at length upon the minutes. Notice of the time of holding such meeting, and the purpose for which it is to be held, shall be published in some newspaper published or of general circulation in said city or village, at least four weeks before the same shall be held, or in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed. *Second.* All such assessments shall be known as "special assessments for improvements," and shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, to be placed on the tax roll for collection, subject to the same penalties, and collected in like manner, as other city or village taxes.

VIII. **[Business licenses.]**—To raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city or village, and regulate the same by ordinance. All such taxes shall be uniform in respect to the classes upon which they are imposed; *Provided, however,* That all scientific and literary lectures and entertainments shall be exempt from such taxation, as

SEC. 69. The council have no power to contract for grading a street until they first enact an ordinance therefor. 9 Neb. 358. When the statute prescribes a particular mode in which the corporation is to act, that mode is exclusive. 4 Neb. 350. Where a city in the reasonable exercise of the authority given it, establishes street grades, and works them in accordance therewith, there being no provision in the charter or laws for the payment of damages, an action will not lie. 6 Neb. 27. A city is liable for injuries sustained on account of defective sidewalks. 5 Neb. 452. But where the owner of a lot, in erecting a building thereon, leaves open an excavation in front of the lot and in the street, he is liable to the city for the amount of a judgment recovered against it by an individual who was injured thereby. *Id.* 144.

well also as concerts and other musical entertainments given exclusively by citizens of the city or village.

**IX. [Liquor licenses.]**—To license, regulate and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor, the license not to extend beyond the municipal year in which it shall be granted, and to determine the amount to be paid for such license; *Provided*, That the city council or board of trustees may grant permits to druggists for the sale of liquors for medicinal, mechanical, sacramental and chemical purposes only, subject to forfeiture, and under such restrictions and regulations as may be provided by ordinance; *Provided further*, That in granting licenses such corporate authorities shall comply with whatever general law of the state may be in force relative to the granting of licenses.

**X. [Dog tax.]**—To impose a license tax of not less than three nor more than ten dollars upon the owners and harborers of dogs and enforce the same by appropriate penalties, and to authorize the destruction of any dog, the owner or harborers of which shall refuse or neglect to pay such license tax; *Provided*, That no such license shall authorize the keeping, owning or harboring of more than one dog.

**XI. [Judges and clerks of election.]**—To appoint judges and clerks of all elections, and prescribe the manner of conducting the same, and the return thereof, and for holding special elections for any purpose provided by law.

**XII. [Penalties.]**—To make all such ordinances, by-laws, rules, regulations, resolutions, not inconsistent with the laws of the state, as may be expedient, in addition to the special powers in this chapter granted, maintaining the peace, good government, and welfare of the corporation, and its trade, commerce and manufactories, and to enforce all ordinances by inflicting fines or penalties for breach thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, and in default of payment, to provide for confinement in prison or jail, and at hard labor upon the streets or elsewhere, for the benefit of the city or village.

**XIII. [Duties of officers.]**—To regulate and prescribe the powers, and duties, and compensation of officers not herein provided for, and to require from all officers and servants, elected or appointed, bond and security for the faithful performance of their duties.

**XIV. [Gas.]**—To make contracts with, and authorize any person, company or associations, to erect gas works, and give such persons, company or associations, the exclusive privilege of furnishing gas to light the streets, lanes and alleys, for any length of time not exceeding twenty-one years.

**XV. [Water and water works.]**—To establish, alter and change the channels of water courses, and to wall them and cover them over; to establish, make and regulate wells, cisterns, wind mills, aqueducts, and reservoirs of water, and to provide for the filling of the same. *Second.* To make contracts with, and authorize any person, company, or corporation to erect and maintain a system of water works and water supply, and to give such contractors the exclusive privilege, for a term not exceeding twenty-five years, to lay down in the streets and alleys of said city, water mains and supply pipes, and to furnish water to such city or village and to the residents thereof, and under such regulations as to price, supply, rent of water meters, as the council or board of trustees may from time to time prescribe by ordinance, for the protection of the city, village or people. The right to supervise and control such corporation as above provided, shall not be waived or set aside. *Third.* To provide for a supply of water for the purpose of fire protection, and public use, and for the use of the inhabitants of such cities or villages, by the erection, construction and maintaining of a system of water works; *Provided*, That all contracts for the erection or construction of any such works, or any part thereof, shall be let to the lowest responsible bidder therefor, upon not less than twenty days public notice of the terms and conditions upon which the contract is to be let having been given by publication in a newspaper

**XVI.** An ordinance punishing persons who wilfully, maliciously or mischievously meddle with or trespass upon the premises or real property of others is valid. 4 Neb. 101.

published in such city or village; and if no newspaper is published therein, then in some newspaper published in the county; *Provided further*, That no member of the city council, or board of trustees, or mayor, shall be directly or indirectly interested in such contract; and in all cases, the council or board of trustees, as the case may be, shall have the right to reject any and all bids that may not be satisfactory to them. Such cities or villages may borrow money, or issue bonds for the purpose, and levy and collect a general tax in the same manner as other municipal taxes may be levied and collected, for the erection, construction and maintenance of such water works, to an amount not exceeding three mills on the dollar, in any one year, on all property within such city or village as shown and valued on the assessment rolls of the assessor of the proper precinct or township, in addition to the sum authorized to be levied under subdivision one of this section; and all taxes raised under this clause shall be retained in a fund known as "water fund;" *Provided further*, That no such money shall be borrowed or bonds issued, unless the same shall have been authorized by a vote of a majority of the electors of such city or village voting thereon at an election, submitting a proposition to the electors of such city or village to that effect. The bonds shall be bonds of the city, called "water bonds," to become due in twenty years from the date of issue, but payable at any time after five years, drawing seven per cent. interest per annum payable annually, and bonds shall not be issued under the provisions hereof to a greater amount than one hundred thousand dollars. For the purpose of erecting, constructing, locating, maintaining or supplying such water works, any such city or village may go beyond its territorial limits, and may take, hold and acquire rights, property and real estate, by purchase or otherwise; and may for this purpose take, hold and condemn any and all necessary property and real estate in the manner provided for taking and condemning of private property for public use, and the jurisdiction of such city or village to prevent any pollution or injury to the stream or source of water for the supply of such water works, shall extend ten miles beyond its corporate limits; and the council or board of trustees of such towns or villages shall have power to make and enforce all needful rules and regulations in the erection, construction, use and management of such water works, and for the use of the water therefrom; and such cities or villages shall have the right and power to tax, assess and collect from the inhabitants thereof such tax rent or rates, for the use and benefit of water used or supplied to them by such water works, as the common council, or board of trustees shall deem just, or expedient, and all such water rates, taxes or rents shall be a lien upon the premises, or real estate upon or for which the same is used or supplied; and such taxes, rents or rates shall be paid and collected, and such lien enforced, in such manner as the common council shall by ordinance direct and provide. The expense of locating, erecting and constructing reservoirs and hydrants for the purpose of fire protection, and the expense of constructing and laying water main pipes, or such part thereof as may be just and lawful, may be assessed upon and collected from the property and real estate especially benefited thereby, if any, in such manner as may be provided for the making of special assessments for other public improvements, in such cities, towns, and villages. All the income received by such cities or villages from such water works, from the payment and collection of water taxes, rents, or rates or assessments, shall be kept in a separate fund, and shall first be applied in the payment of running expenses, and interest on bonds or money borrowed, and used in the erection and construction of such water works; and should there be any surplus it shall be annually created into a sinking fund for the payment of water bonds or for the improvement of the works, as the common council or board of trustees may direct. As soon as a system of water works shall have been established by any city or village, under the provisions of this section, the mayor of such city, or the president of the board of trustees of such village, shall nominate, and by and with the advice and consent of the city council or board of trustees, as the case may be, shall appoint three persons who shall be known as the water commissioners of



such city or village, one of whom shall hold his office for the term of one year, and one for the term of two years, and one for the term of three years, and respectively until their successors shall be appointed and qualified; and annually thereafter there shall be nominated and appointed in such city or village one water commissioner, who shall hold his office for the term of three years, and until his successor shall be appointed and qualified. But any or all of said commissioners may at any time, for sufficient cause, be removed by a two-thirds vote of said city council or board of trustees; and vacancies occurring in the board of water commissioners, by death, resignation, removal from office, as aforesaid, or removal from the city or village, may be filled in the manner hereinbefore provided for the appointment of such commissioners. Each of said commissioners shall, before he enters upon the discharge of his duties, execute a bond to such city or village in a sum to be fixed by the mayor and council or board of trustees, but not less than five thousand dollars, conditioned for the faithful discharge of his duties, and signed by two or more good and sufficient sureties, to be approved by the mayor and council or board of trustees. It shall be the duty of such board of water commissioners, subject to the supervision of the mayor and council or board of trustees, to have general management and control of the system of water works in their city or village, fixing the rates to be paid by the inhabitants thereof, within such limits as may be prescribed by ordinance, for the use of water, water-meters, and hydrants; to collect all moneys receivable by the city on account of said system of water works; and to faithfully account for and pay the same over to the treasurer of such city or village, taking his receipts therefor in duplicate and filing one of the same with the city or village clerk; to make a detailed report to the city council or board of trustees, at least once every six months, of the condition of said water system and of all the mains, pipes, hydrants, reservoirs, and machinery, such improvements, repairs, and extensions thereof as they may think proper, and showing the amount of receipts and expenditures on account thereof, for the preceding six months; and no moneys shall be expended for improvement, repair, or extension of said water works or system, except upon recommendation of said water commissioners. Said water commissioners shall perform such other duties as may be prescribed by ordinance. They shall each be paid a salary, to be fixed by ordinance, not less than two nor more than four hundred dollars per annum; and upon their written recommendation, the council or board of trustees shall employ such laborers and clerks as may to them seem necessary; and no member of the council or board of trustees shall be eligible to the office of water commissioner, during the term for which he was elected.

**XVI. [Animals].**—To regulate the running at large of cattle, hogs, horses, mules, sheep, goats, dogs, and other animals, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibitions, and the expense of impounding and keeping the same, and of such sale.

**XVII. [Pounds].**—To provide for the erection of all needful pens and pounds, within or without the city limits, and to appoint and compensate keepers thereof, and to establish and enforce rules governing the same.

**XVIII. [Fire places].**—To regulate the construction of, and order the suppression and cleaning of fire places, chimneys, stoves, stove pipes, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory, or business, which may be dangerous in causing or promoting fires, and to prescribe limits within which no dangerous or obnoxious and offensive business may be carried on.

**XIX. [Fire limits].**—To prescribe and alter limits within which no buildings shall be constructed except of brick, stone or other incombustible material, with fireproof roof, and after such limits are established no special permit shall be given for the erection of buildings of combustible material within said limits.

**XX. [Depot grounds].**—To regulate levees, depots, depot grounds and places for storing freights and goods, and to provide for and regulate the passage of railways through streets and public grounds of the city or village.

**XXI. [Railway crossings.]**—To regulate the crossing of railway tracks, and to provide precautions, and prescribe rules regulating the same; and to regulate the running of railway engines, cars or trucks within the limits of said city or village, and prescribe rules regulating thereto, and to govern the speed thereof, and to make any other and further provisions, rules, and restrictions to prevent accidents at crossings, and on the tracks of railways, and to prevent fires from engines.

**XXII. [Weights and measures.]**—To establish standard weights and measures, and regulate the weights and measures to be used in the city or village, and to regulate the weighing and measuring of every commodity sold in the city or village, in all cases not otherwise provided by law.

**XXIII. [Inspection of hay, etc.]**—To provide for the inspection and weighing of hay, grain, and coal, the measuring of wood and fuel to be used in the city or village, and to determine the place or places of the same, and to regulate and prescribe the place or places of exposing for sale hay, coal, and wood; to fix the fees and duties of persons authorized to perform the duties named in this subdivision.

**XXIV. [Removal of obstructions.]**—To remove all obstructions from the sidewalks, curbstones, gutters, and cross walks, at the expense of the person placing them there, or of the city or village, and to require and regulate the planting and protection of shade trees in the streets, the building of bulk heads, cellar and basement ways, stairways, railways, window and door ways, awnings, hitching posts and rails, lamp posts, awning posts, and all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks, in said city or village.

**XXV. [Riots.]**—To prevent and restrain riots, routs, noises, disturbances, or disorderly assemblies; to regulate, punish, and prevent the discharge of fire-arms, rockets, powder, fireworks, or any other dangerous combustible material, in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings; to regulate, prevent, and punish the carrying of concealed weapons; to arrest, regulate, punish, fine, or set at work on the streets or elsewhere, all vagrants and persons found without means of support or some legitimate business.

**XXVI. [Fast driving.]**—To prevent and remove all encroachments into and upon all sidewalks, streets, avenues, alleys, and other city or village property, and to punish and prevent all horse racing, fast driving or riding in the streets, highways, alleys, bridges, or places in the city or village, and all games, practices, or amusements therein, likely to result in damage to any person or property; to regulate, prevent, and punish the riding, driving, or passing of horses, mules, oxen, cattle, or other teams, or any vehicle drawn thereby, over, upon, or across sidewalks, or along any street of the city or village.

**XXVII. [Open and widen streets.]**—To open, widen, or otherwise improve or vacate any street, avenue, alley or lane within the limits of the city or village; and also to create, open and improve any new street, avenue, alley, or lane; *Provided*, That all damages sustained by the citizens of the city or village, or of the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance; *Provided further*, That whenever any street, avenue, alley, or lane shall be vacated, the same shall revert to the owners of the adjacent real estate, one-half on each side thereof.

**XXVIII. [Same.]**—To create, open, widen, or extend any street, avenue, alley, or lane, or annul, vacate, or discontinue the same whenever deemed expedient for the public good, and to take private property for public use or for the purpose of giving right of way or other privilege to any railroad company, or for the purpose of erecting or establishing market places, or for any other necessary public purpose; *Provided, however*, That in all cases the city or village shall make the person or persons, whose property shall be taken or injured thereby, adequate compensation therefor, to be determined by the assessment of five disinterested householders, who shall be elected and compensated as may be prescribed by

ordinance, and who shall, in the discharge of their duties, act under oath faithfully and impartially to make the assessment to them submitted.

**XXIX. [Borrow money.]**—To borrow money on the credit of the city, and pledge the credit, revenue, and public property of the city for the payment thereof when authorized in the manner hereinafter provided.

**XXX. [Passage of ordinances.]**—All ordinances shall be passed pursuant to such rules and regulations as the council or the board of trustees may provide; and all such ordinances may be proved by the certificate of the clerk, under the seal of the city or village, and when printed or published in book or pamphlet form, and purported to be published by authority of the city or village, shall be read and received in evidence in all courts and places without further proof.

**XXXI. [Financial statement.]**—The council or trustees shall cause to be published semi-annually a statement of the receipts of the corporation and sources thereof, and an itemized account of expenditures, with a statement of the financial condition of the city or village.

**XXXII. [Burial grounds.]**—To purchase, hold, and pay for, in the manner herein provided, lands not exceeding eighty acres in one body, outside of the limits, for the purpose of the burial of the dead, and all necessary grounds for hospital grounds and water works.

**XXXIII. [Improve same.]**—To survey, plat, map, grade, fence, ornament, and otherwise improve all burial and cemetery grounds and avenues leading thereto, owned by such city or village; to construct walks, to protect ornamental trees therein, and provide for paying the expenses thereof.

**XXXIV. [Cemetery lots.]**—To convey cemetery lots, by certificates signed by the mayor and chairman and countersigned by the clerk, under the seal of the city or village, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by numbers, as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee-simple to such lot for the sole purpose of interment, under the regulation of the city council or board of trustees; and such certificate shall be entitled to be recorded in the office of the county clerk of the proper county, without further acknowledgment; and such description of lots shall be deemed and recognized as a sufficient description thereof.

**XXXV. [Same.]**—To limit the number of cemetery lots which shall be owned by the same person at the same time; to prescribe rules for enclosing, adorning and erecting monuments and tombstones on cemetery lots; to prohibit any diversion of the use of such lots, and any improper adornment thereof; but no religious test shall be made as [to] the ownership of lots, the burial therein, or the ornamentation of graves, or of such lots.

**XXXVI. [Same.]**—To pass rules and ordinances imposing penalties and fines, not exceeding one hundred dollars, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereof, and trespassers therein. And the officers of such city or village shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the corporation itself. [Amended and took effect March 2, 1881.]

**Sec. 70. [Work on streets.]**—Each city and village governed by this chapter is hereby empowered to provide that all the able-bodied male residents of the corporation between the ages of twenty-one and fifty years, shall, between the first day of April and the first day of November of each year, either by themselves or satisfactory substitute, perform two days labor upon the streets, alleys or highways within such corporation, at such time and places as the proper officer may direct, and upon three days notice in writing given; *Provided*, That all persons so notified may commute the labor so required by the payment of the sum of two dollars and fifty cents to the proper officer of such city or village, as may be provided by ordinance, and the fund arising under this section shall be expended by the city or village authorized, in the repair and maintenance of the streets and alleys and highways in said city or village. They may further provide that for each

days failure to attend and perform the labor as required at the time and place specified, the delinquent shall forfeit and pay to the corporation any sum not exceeding one dollar for each days delinquency. The amount so due for labor tax to the amount of two dollars and fifty cents, upon the failure to labor or commute as above required, shall be treated and collected as taxes on property, and the same shall be a lien on all the property of such persons that may be listed and assessed for taxation for that year; and it shall be the duty of the city council or trustees to certify the amount due from each individual, as aforesaid, to the county treasurer, as hereinafter provided, and the certificate of the city or village clerk, under the seal of the city, that the person named therein has performed the labor, or commuted, as herein required, shall be received by the county treasurer in discharge of the amount due from such person. [Amended and took effect March 2, 1881.]

SEC. 71. [**Stagnant water—Drainage.**—Each city and village governed by this chapter shall have power to cause any lot of land within its limits on which water at any time becomes stagnant, to be filled up or drained in such manner as may be directed by a resolution of the council or trustees; and such owner or his agent shall, after service of a copy of such resolution, or after a publication of the same in some newspaper of general circulation in such corporation for two consecutive weeks, comply with the directions of such resolution within the time therein specified, and in case of a failure or refusal to do so, it may be done by said corporation; and the amount of money so expended shall be assessed against such property, and the amount thereof collected as other special assessments.

SEC. 72. [**Recovery of fines.**—Fines may in all cases, and in addition to any other mode provided, be recovered by suit or action before a justice of the peace, or other court of competent jurisdiction, in the name of the state. And in any such suit or action where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing as near as may be the facts of the alleged violation.

SEC. 73. [**May use county jail.**—Any city or village shall have the right to use the jail of the county for the confinement of such persons as may be liable to imprisonment under the ordinances of such city or village, but it shall be liable to the county for the cost of keeping such prisoners.

SEC. 74. [**Suits when barred.**—All suits for the recovery of any fine, and prosecutions for the commission of any offense, made punishable as herein provided, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered, or the prosecution is commenced.

SEC. 75. [**No increase in salaries.**—The emoluments of no officer whose election or appointment is required by this chapter, shall be increased or diminished during the term for which he shall have been elected or appointed; and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed, when during the same time the emoluments had been increased.

SEC. 76. [**Passage of ordinances.**—On the passage or adoption of every by-law or ordinance, and every resolution or order to enter into a contract by the council or board of trustees, the yeas and nays shall be called and recorded; and to pass or adopt any by-law, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the council or trustees shall be required. All appointments of the officers by any council or trustees shall be made *viva voce* and the concurrence of a like majority shall be required, and the names of those, and for whom they voted, on the vote resulting in an appointment, shall be recorded.

SEC. 77. [**Highways, squares, etc.**—The city council or board of trustees shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares and commons within the city or village, and shall cause the same to be kept open and in repair, and free from nuisances. The

cities shall have power by ordinance to sell and convey all public squares, streets and alleys within the cities or villages; *Provided*, A petition containing the signature of three-fourths of the property holders of said city be presented to the city council, and that said petition be published not less than four weeks in each paper published in said city, and that any person aggrieved by said sale shall state cause why said property should not be sold to the district court of said county wherein said city is situated, and if the said court shall decide that said party or parties have shown good and sufficient cause why said public property should not be so disposed of, then said public property shall not be sold. The proceeds of such property shall not be used for any other purpose except to pay any indebtedness against such city or for public improvement in said city. All public bridges exceeding sixty feet in length, over any stream, crossing a state or county highway, shall be constructed and kept in repair by the county. *Provided*, That when any city or village has constructed a bridge over sixty feet span, on any county or state highway within their corporate limits and have incurred a debt for the same, then the treasurer of the county in which said bridge is located shall pay to the treasurer of said city or village seventy-five per cent. of all bridge taxes collected in said city or village until said debt is fully paid and interest upon the same. *Provided further*, That the council or trustees may appropriate, in the manner hereinafter provided, a sum not exceeding five dollars per lineal foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to said city or village on a highway leading to the same, or any bridge across any unnavigable river which divides the county in which said city or village is located, from another state; and that no street or alley which shall hereafter be dedicated to public use by the proprietor of ground in any city or village, shall be deemed a public street or alley, or to be under the use or control of the city council or board of trustees, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

SEC. 78. [Markets].—No charge or assessment of any kind shall be made or levied on any wagon or other vehicle, or the horses thereto attached, or on the owner bringing produce or provisions to any of the markets in the city or village, or standing in or occupying a place in any of the market spaces of the city or village, or in the streets contiguous thereto, on market days and evenings previous thereto; but the city council or board of trustees shall have full power to prevent forestalling, to prohibit or regulate huckstering in the markets, to prescribe the kind and description of articles which may be sold, and the stand or places to be occupied by the venders, and may authorize the immediate seizure and arrest, or removal from the markets, of any person violating its regulations as established by ordinance, together with any article of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

SEC. 79. [Passage of ordinances].—All ordinances and resolutions, or orders for the appropriation or payment of money, shall require for their passage or adoption the concurrence of a majority of all members elected to the council or board of trustees; ordinances of a general or permanent nature shall be fully and distinctly read on three different days, unless three-fourths of the council or trustees shall dispense with the rule; ordinances shall contain no subject, which shall not be clearly expressed in its title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contain the entire ordinance or section as revised or amended, and the ordinance or section so amended shall be repealed.

SEC. 80. [Claims].—All claims against the city or village must be presented to the council or trustees in writing, with a full account of the items, verified by the oath of [the] claimant, or his agent, that the same is correct, reasonable and just, and no claim or demand shall be audited or allowed unless presented and verified as provided for in this chapter; and no costs shall be recovered against such city or village in any action brought against it for any unliquidated claim, which has not been presented to the city council or board of trustees to be audit-

ed, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with the interest due.

SEC. 81. [Payment of claims.]—Upon the allowance of claims by the council or trustees, the order for their payment shall specify the particular fund or appropriation out of which they are payable as specified in the annual appropriation bill to be passed in the manner hereinafter provided; and no order or warrant shall be drawn in excess of fifty *per centum* of the current levy for the purpose for which it is drawn, unless there shall be sufficient money in the treasury at the credit of the proper fund for its payment; and no claim shall be audited or allowed except an order or warrant for the payment thereof may legally be drawn.

SEC. 82. [Taxes.]—The council or trustees of each city or village shall, at the time provided by law, cause to be certified to the county clerk the percentage or number of mills on the dollar of tax levied for all city or village purposes by them on the taxable property within said corporation for the year then ensuing, as shown by the assessment roll for said year, including all special assessments and taxes assessed as hereinbefore provided, and the said clerk shall place the same on the proper tax lists to be collected in the manner provided by law for the collection of state and county taxes in the county where such city or village is situated, and in all sales for any delinquent taxes for municipal purposes, if there be other delinquent taxes due from the same person, or lien on the same property, the sale shall be for all the delinquent taxes; and such sales, and all sales made under or by virtue of this section or the provisions of law herein referred to, shall be of the same validity, and, in all respects, be deemed and treated as though such sales had been made for the delinquent state and county taxes exclusively. The amount which may be so certified, assessed and collected, shall not exceed ten mills on the dollar to defray its general and incidental expenses, together with any special assessments or special taxes, or amounts assessed as taxes under the provisions of this chapter, and such sum as may be authorized by law to be levied for the payment of outstanding bonds and debts.

SEC. 83. [Delinquent taxes.]—All delinquent taxes of any city or village, delinquent at the time of the adoption of this chapter, shall be certified, together with the tax lists, to the county treasurer, and be collected in the same manner as delinquent state and county taxes; and all sales of property for such delinquent municipal taxes shall be as valid, and, in all respects, be deemed and treated as though such sales had been made for delinquent state and county taxes.

SEC. 84. [City taxes collected by county.]—The treasurer of the county shall pay over on demand, to the treasurer of any city or village, all money received by him arising from taxes levied belonging to such city or village, together with all money collected as a tax on dogs from the residents of such corporation, for the use of the general fund therein.

SEC. 85. [Fiscal year.]—The fiscal year of each city and village shall commence on the first Tuesday of May.

SEC. 86. [Annual appropriation ordinance.]—The city council of cities, and board of trustees in villages, shall, within the first quarter of each fiscal year, pass an ordinance, to be termed the annual appropriation bill, in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation, not exceeding in the aggregate the amount of tax authorized to be levied during that year; and in such ordinance shall specify the objects and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriations shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of such city or village, either by a petition signed by them, or at a general or special election duly called therefor; and all appropriations shall end with the fiscal year for which they were made.

SEC. 87. [Estimate of expenses.]—Before such annual appropriation bill shall be passed the council or trustees shall prepare an estimate of the proba-

ble amount of money necessary for all purposes to be raised in said city or village during the fiscal year for which the appropriation is to be made, including interest and principal due on the bonded debt and sinking fund, itemizing and classifying the different objects and branches of expenditures as near as may be, with a statement of the entire revenue of the city or village for the previous fiscal year, and shall enter the same at large upon its minutes, and cause the same to be published four weeks in some newspaper published or of general circulation in the city or village.

**Sec. 88. [Money ordinances—Expenditure in excess of appropriation.]**—The mayor and council, or board of trustees, shall have no power to appropriate, issue or draw any order or warrant on the treasurer for money, unless the same has been appropriated or ordered by ordinance, or the claim, for the payment of which such order or warrant is issued, has been allowed according to the provisions of this chapter, and appropriations for the class or object out of which such claim is payable has been made as provided in section 86. Neither the city council or the board of trustees, nor any department or officer of the corporation, shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill for that year, except as herein otherwise specially provided; and no expenditure for any improvement, to be paid for out of the general fund of the corporation, shall exceed in any one year the amount provided for such an improvement in the annual appropriation bill. *Provided, however,* That nothing herein contained shall prevent the city council or board of trustees from ordering, by a two-thirds vote, the repair or restoration of any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made. The city council or board of trustees may, by a like vote, order the mayor or chairman of the board of trustees and finance committee to borrow a sufficient sum to provide for the expense necessary to be incurred in making any repairs or restoration of improvements, the necessity of which has arisen, as is last above mentioned, for a space of time not exceeding the close of the next fiscal year, which sum, and the interest, shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein. Should any judgment be obtained against the corporation, the mayor, or the board of trustees, and finance committee, under the sanction of the city council or board of trustees, may borrow a sufficient amount to pay the same, for a space of time not exceeding the close of the next fiscal year, which sum and interest shall, in like manner, be added to the amount authorized to be raised in the general tax levy of the next year, and embraced therein.

**Sec. 89. [Contracts.]**—No contract shall be hereafter made by the city council or board of trustees, or any committee or member thereof; and no expense shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditure shall have been ordered by the city council or board of trustees or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided.

**Sec. 90. [Special assessments.]**—All money received on special assessments shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and said money shall be used for no other purpose whatever, unless to reimburse such corporation for money expended for such improvement.

**Sec. 91. [Consolidation.]**—Any two or more cities or villages, governed by the provisions of this chapter, lying adjacent to each other, may consolidate and become one city or municipal corporation, as the case may be, and under the name and with the powers, obligations, and duties of the city or municipal corporation, whose name shall be assumed and adopted in the proceedings in this chapter provided.

**Sec. 92. [Proceedings.]**—When any city or village shall desire to be annexed to another and contiguous city or village, the council or trustees of each

city or village, shall appoint three commissioners to arrange and report to such council or trustees respectively the terms and conditions on which the proposed annexation can be made; and if the council or trustees of each of such cities or villages approve of the terms and conditions proposed, they shall, by proper ordinance, so declare; and thereupon the council or trustees of each of such cities or villages, by ordinance passed at least one month prior to the general annual election therein, may submit the question of such annexation, upon the said terms and conditions so proposed, to the electors of their respective cities or villages, and if a majority of the electors, of each, vote in favor of such annexation, the council or trustees of each shall, by proper ordinance, so declare; and a certified copy of the whole proceedings for annexation of the city or village to be annexed shall be filed with the clerk of the city or village to which the annexation is made.

**SEC. 93. [When complete.]**—When certified copies of the proceedings for annexation are filed as contemplated in the preceding section, the annexation shall be deemed complete, and the city or village to which the annexation is made shall have power to pass such ordinances, not inconsistent with law, as will carry into effect the terms of such annexation; and thereafter the city or village annexed shall be governed as part of the city or village to which annexation of it is made; *Provided*, That such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or villages, but they may be enforced, the same as if no such annexation had taken place.

**SEC. 94. [Obligations.]**—Whenever a city or village is thus annexed to another, the property, both real and personal, the notes, bonds, obligations, accounts, demands, evidences of debt, rights, and cases in action, franchises, books, records, maps, plats, and effects of every nature, of and belonging to the two adjacent cities, or municipal corporations, so annexed, shall be the property of and belong to the corporation to which it is annexed.

**SEC. 95. [Annexation of adjacent territory.]**—Whenever the owner or owners and inhabitants, or a majority thereof in numbers or value, of any territory lying contiguous to the corporate limits of any city or village, whether said territory be already in fact subdivided into lots or parcels of ten acres or less, or remains unsubdivided, shall desire to annex such territory to any city or village, they shall first cause an accurate plat or map of the said territory to be made, showing such territory subdivided into blocks and lots, and conforming as near as may be to the blocks, lots and streets of the adjacent city or village, and also showing the descriptions and numberings mentioned in said act relating to cities and villages under the title of "City and Village Plats," and conforming thereto as nearly as may be, said plat or map to be prepared under the supervision of the city engineer in case of annexation to adjacent cities, and under the supervision of a competent surveyor in any case, and a copy of said plat or map, certified by said engineer or surveyor, as the case may be, shall be filed in the office of the clerk of the city or village, together with a request in writing, signed by a majority of the property owners and inhabitants in numbers and value of the territory described in said plat for the annexation of said territory; and the city council or board of trustees shall at the next regular meeting thereof after the filing of such plat, and request for annexation, vote upon the question of such annexation, and such vote shall be spread upon the journal of said council or board of trustees. If a majority of all the members of the council or board of trustees vote for such annexation, an ordinance shall be prepared and passed by said council or board declaring the annexation of said territory to the corporate limits of said city or village, and extending the limits thereof accordingly; and an accurate map or plat of said territory, as hereinbefore described, certified by said engineer or surveyor and acknowledged and proven as provided by law in such cases, shall at once be filed and recorded in the office of the county clerk or recorder of the proper county, together with a certified copy of the ordinance declaring such annexation, under the seal of the city or village, and thereupon such annexation of said adjacent territory shall be deemed complete, and the territory included and described



in said plat on file in the clerk or recorder's office shall be deemed and held to be a part of said original corporate city or village, and the inhabitants thereof shall thereafter enjoy the privileges and benefits of such annexation, and be subject to the ordinances and regulations of said city or village; *Provided*, That such adjacent territory so annexed shall not be taxed for any indebtedness of the city or village to which such territory is annexed, existing prior to the date of the completion of such annexation. [Amended and took effect Mar. 2, 1881.]

**SEC. 96, 97, 98. [Repealed Mar. 2, 1881.]**

**SEC. 99. [Same.]**—When any city or village shall desire to annex to its corporate limits any contiguous territory, whether such territory be in fact subdivided into tracts or parcels of ten acres or less, or be not so subdivided, the council or board of trustees of said corporation shall vote upon the question of such annexation, and if a resolution to annex such territory, describing the same in general terms, be adopted by two-thirds vote of all the members elect of such council or board of trustees, said resolution, and the vote thereon, shall be spread upon the records of said council or board. Said city or village may thereupon present to the district court of the county in which such territory lies, a petition praying for the annexation of such territory, together with an accurate plat or map of the same, showing the subdivisions of said territory, if it be so subdivided, and its relative position to such a city or village; and such petition shall set forth the resolution of said council or board of trustees for annexation of the same, and the vote thereon, and also the names of the various owners of said territory, if there be more than one such owner, and shall also set forth the material benefits and advantages to be derived from such annexation. A notice of the filing of said petition shall be served upon the owner or owners of said adjacent territory in the same manner as a summons in civil actions; and in case said owner or owners be non-residents of the state, said notice shall be published in the manner provided for service by publication in civil actions. Issues shall be joined and the cause tried in the same manner, as nearly as may be, as provided for trial of causes under the code of civil procedure, except that no judgment for costs shall be rendered against any defendant who does not make any defense. If the court find the allegations of the petition to be true, and that such territory, or any part thereof, would receive material benefit by its annexation to such corporation, or that justice and equity require such annexation of said territory, or any part thereof, a decree shall be entered accordingly; and a copy of the decree of said court duly certified under the seal thereof, together with a plat of the territory with a proper description thereof, so decreed to be annexed, and in case the same is already subdivided, showing the same subdivided into blocks and lots to correspond as near as may be with the fact, and as near as may be with the lots, blocks, and streets of the adjacent city or village, and corresponding as near as may be to the provisions of said act, under the title of "City and Village Plats," shall be filed and recorded in the office of the county clerk or recorder of the county in which such territory lies; and from the time of filing of such decree and plat, the territory therein described shall be included in and become a part of such city or village, and the inhabitants thereof shall receive the benefits of and be subject to the ordinances and regulations of such city or village; *Provided*, That appeals may be taken from the proceedings aforesaid in the district court, as in other civil cases; but notice of appeal must be given immediately on the entering of the decree in said district court, and the filing of the said decree and plat in the county clerk's office shall be stayed to abide the event of such appeal, and in case such appeal be not perfected, said corporation may file said decree and plat as hereinbefore provided for, without being prejudiced by lapse of time. On the filing of such decree and plat the council or board of trustees shall pass an ordinance declaring such territory to be annexed to such city or village, and extending the corporate limits thereof accordingly, and file a certified copy of the same in the clerk's office. [Amended and took effect Mar. 2, 1881.]

**SEC. 100. [Repealed Mar. 2, 1881.]**

SEC. 101. [**Disconnecting territory.**].—Whenever a majority of the legal voters of any territory within any city or village, and being upon the border, and within the boundary thereof, shall petition the district court of the county in which such city or village is situated, praying to be disconnected therefrom, such petition shall be filed with the clerk of the court at least ten days prior to the first day of the term at which it is proposed to be heard, and like proceedings shall be had thereon as is required in section ninety-nine, as amended in this act, for the annexation of territory to cities and villages, so far as the same are applicable; *Provided*, That the provisions of this section shall apply only to lands not laid out into city or village blocks, or lots; *And, provided also*, That in case any territory be disconnected from any city or village, a certified copy of the ordinance or decree disconnecting the same, together with a plat of the disconnected territory, shall be filed and recorded in the office of the clerk of the proper county. [Amended and took effect Mar. 2, 1881.]

SEC. 102. [**Repealed March 2, 1881.**]

SEC. 103. [**Effect of act on existing corporations.**].—Nothing herein contained shall be construed as to affect the boundaries or limits of any city or village now established under any law existing at the adoption of this chapter, but such limits and boundaries shall remain as established until changed in the manner provided by law.

#### CITY AND VILLAGE PLATS.

SEC. 104. [**Plats to be made.**].—Every original owner or proprietor of any tract or parcel of land, who has heretofore subdivided, or shall hereafter subdivide the same into three or more parts for the purpose of laying out any city or village or any addition thereto or any part thereof, or suburban lots, shall cause a plat of such subdivision, with references to known or permanent monuments, to be made, which shall accurately describe all the subdivisions of such tract or parcel of land, numbering the same by progressive numbers, and giving the dimensions and length and breadth thereof, and the breadth and the courses of all streets and [alleys] established therein. Descriptions of lots and parcels of land in such subdivisions, according to the number and designation thereof on said plat contained, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes. The duty to file for record a plat as provided herein, shall attach as a covenant of warranty in all conveyances hereafter made of any part or parcel of such subdivision by the original owner or proprietors against any and all assessments, costs and damages paid, lost or incurred by any grantee or person claiming under him, in consequence of the omission on the part of said owner or proprietors to file such plat.

SEC. 105. [**Statement—Plat.**].—Every such plat shall contain a statement to the effect that the above or foregoing subdivision of (here insert a correct description of the land or parcel subdivided,) as appears on this plat, is with the free consent and in accordance with the desire of the undersigned owners and proprietors, and shall be duly acknowledged before some officer authorized to take the acknowledgment of deeds; and when thus executed and acknowledged, said plat shall be filed for record and recorded in the office of the recorder of the proper county.

SEC. 106. [**Acknowledgment and record.**].—The acknowledgment and recording of such plat is equivalent to a deed in fee simple of such portion of the premises platted, as is on such plat set apart for streets or other public use, or as is thereon dedicated to charitable, religious, or educational purposes.

SEC. 107. [**Streets and alleys.**].—Streets and alleys laid out in any addition to any city or village shall be continuous with and correspond in directions and width to the streets and alleys of the city or village to which they are an addition.

SEC. 108. [**Vacation of plat.**].—Any such plat may be vacated by the proprietors thereof at any time before the sale of any lots therein, by a written instrument declaring the same to be vacated, duly executed, acknowledged, or proved and recorded in the same office with the plat to be vacated; and the exe-

cution and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, commons and public grounds laid out or described in such plat. And in cases where any lots have been sold, the plat may be vacated, as herein provided, by all the owners of lots in such plat joining in the execution of the writing aforesaid.

**SEC. 109. [Same—Rights preserved.]**—Any part of a plat may be vacated under the provisions and subject to the conditions of this chapter, provided such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat, and provided further, that nothing contained in this section shall authorize the closing or obstructing of any public highway laid out according to law.

**SEC. 110. [Streets enclosed.]**—When any part of a plat shall be vacated as aforesaid, the proprietors of the lots so vacated may enclose the streets, alleys and public grounds adjoining said lots in equal proportions.

**SEC. 111. [Duty of clerks.]**—The county clerk, in whose office the plats aforesaid are recorded, shall write in plain, legible letters across that part of said plat so vacated, the word "vacated," and also make a reference on the same to the volume and page in which the said instrument of vacation is recorded.

**SEC. 112. [Re-platting vacated plat.]**—The owner of any lots in a plat so vacated may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor; and when such plat is acknowledged by such owner, and is recorded in the record office of the county, such lots may be conveyed and assessed by the numbers given them on such plat.

**SEC. 113. [Failure of owner to plat.]**—Whenever the original owner or proprietor of any subdivision of land, as contemplated in section 104 of this chapter, have sold or conveyed any part thereof, or invested the public with any rights therein, and have failed and neglected to execute and file for record a plat as provided in section 104 of this chapter, the county clerk shall notify some or all of such owners and proprietors by mail or otherwise, and demand an execution of said plat as provided; and if such owners or proprietors, whether notified or not, fail and neglect to execute and file for record said plat for thirty days after the issuance of such notice, the clerk shall cause to be made the plat of such subdivision, and any surveying necessary therefor. Said plat shall be signed and acknowledged by the clerk, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and filed for record; and, when so filed for record, shall have the same effect for all purposes as if executed, acknowledged and recorded by the owners or proprietors themselves. A correct statement of the costs and expenses of such plat, surveying, and recording, verified by oath, shall be by the clerk laid before the first session of the county board, who shall allow the same, and order the same to be paid out of the county treasury, and who shall, at the same time, assess the said amount, *pro rata*, upon all several subdivisions of said tract, lot, or parcel so subdivided; and said assessment shall be collected with and in like manner as the general taxes, and shall go to the general county fund; or said board may direct suit to be brought in the name of the county before any court having jurisdiction, to recover of the said original owners or proprietors, or either of them, said cost and expense of procuring and recording said plat.

**SEC. 114. [When county clerk to make plat.]**—Whenever any congressional subdivision of land of forty acres or less, or any lot or subdivision is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof cannot, in the judgment of the county clerk, be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the same, the clerk shall require and cause to be made and recorded a plat of such tract or lot of land with its several subdivisions in accordance with the provisions of this chapter; and he shall pro-

ceed in such cases according to the provisions of section 113, and all the provisions of said section in relation to the plats of cities and villages, and so forth, shall govern as to the tracts and parcels of land in this section referred to.

Sec. 115. [**Existing plats.**].—None of the provisions of this chapter shall be construed to require replatting in any case where plats have been made and recorded in pursuance of any law heretofore in force; and all plats heretofore filed for record, and not subsequently vacated, are hereby declared valid, notwithstanding irregularities and omissions in manner or form of acknowledgement or certificate; but the provisions of this section shall not affect any action or proceeding now pending.

Sec. 116. [**Penalty.**].—Any person who shall dispose of or offer for sale, or lease any lots in any town, or addition to any town or city, until the plat thereof has been duly acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot and part of lot sold or disposed of, leased or offered for sale.

Sec. 117. [**Acts repealed.**].—"An act to incorporate cities of the second class and to define their powers," approved March 1, 1871, and all acts amendatory thereof or supplemental thereto; "An act to provide the manner of collecting taxes in cities of the second class and define their powers of certain officers," approved June 6, 1871; "An act relating to incorporated towns and villages," approved February 27, 1873; "An act to provide a uniform method of platting and dedicating town sites," approved February 25, 1875, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 118. [**Act took effect Sept. 1, 1879.**]

#### FUNDING INDEBTEDNESS.

Sec. 119. [**Bonds.**].—That any city of the second class in the state of Nebraska may issue bonds for the purpose of funding any and all indebtedness now existing or hereafter created, now due or to become due; *Provided*, That said bonds shall be payable in not less than ten years and not more than twenty years from date of their issue, and that said bonds shall bear interest at a rate not exceeding seven per cent. per annum with interest coupons attached, payable annually or semi-annually, and may levy tax on all the taxable property in the city in addition to other taxes for the payment of said coupons as they respectively become due, and the taxes levied to pay the same shall be payable only in cash or said coupons; *Provided*, That the city council of said cities shall further authorize the issuing of said bonds by ordinance when so instructed by a two-thirds majority of all the votes cast at an election held in such city for that purpose, except as hereinafter provided. Notice of said election to be published in four issues of some weekly paper published in the city seeking to issue bonds. [Laws 1881 § 1, chap. 19.]

Sec. 120. [**Refunding bonds.**].—That any city of the second class in the state of Nebraska which has heretofore voted and issued bonds to aid in the construction of any railroad or other work of internal improvement, or [and] which bonds or any part thereof still remain unpaid and are a legal liability against such city and have been finally so determined by a court of competent jurisdiction, and bearing interest at ten per cent. per annum, is hereby authorized to issue coupon bonds at a rate of interest not exceeding seven per cent. per annum, to be substituted in place of and exchanged for such bonds heretofore issued, whenever such city can effect such substitution and exchange, which substitution and exchange

SEC. 117. The following acts relative to cities of the second class organized under the act of 1871 repealed by sec. 117, are omitted, viz: "An act allowing certain cities and towns further time to become cities of the second class." [Gen. Stat. 158.] "An act legalizing the acts of cities of the second class." [Gen. Stat. 159.] "An act to amend section two of an act legalizing the acts of cities of the second class." [Laws 1873, 207.] "An act to amend an act to incorporate cities of the second class and to define their powers, approved March 1, 1871, and to legalize certain taxes therein mentioned." [Laws 1875, 205.] NOTE, that section 3 of this latter act held unconstitutional. 5 Neb. 319, 516. NOTE, also, that "An act to legalize the collecting or receiving and expending moneys collected or received by virtue of any levy made by any city of the second class or incorporated town upon dramshops, liquor dealers, etc." Laws 1877, 171, was held unconstitutional, 8 Neb. 163. 9 Neb. 352.

SEC. 119. "An act authorizing cities to fund their indebtedness." Approved and took effect Feb. 28, 1881.

shall not exceed dollar for dollar; *Provided*, That such substitution and exchange shall have first been duly authorized by a majority vote of the people of said city at an election to be held for the purpose as provided in section 1st of this act. [Id. § 2.]

**SEC. 121. [Recitals.]**—The bonds issued under the provisions of sec. 2 of this act shall have recited therein the object of their issue, and the section of the act under which the issue is made, stating the issue to be in pursuance thereof, and shall also state the number, date and amount of the bond or bonds for which it was substituted, and such new bond shall not be delivered until the surrender of the bond or bonds so designated. [Id. § 3.]

#### ORGANIZATION OF CITIES CONTINUED AND ACTS LEGALIZED.

**SEC. 122. [Organization of certain cities continued.]**—That in all cases where any municipal corporation containing less than fifteen hundred and more than one thousand inhabitants shall have legally organized as a city of the second class, under a law in force at the time of such organization, and shall not have organized as a village under the provisions of the act to provide for the organization, government and powers of cities and villages, approved March 1, 1879, and shall not so organize by the election of officers on the first Tuesday of April, 1881, the organization of such corporation as a city of the second class shall continue and be in force until changed as now provided by law. [1881 § 1, chap. 21.]

**SEC. 123. [Acts legalized.]**—That all acts performed and elections held by such corporations so legally organized as cities of the second class, under the laws in force at the time of such organization, shall be held to be as valid for all purposes, as if done and held by and in cities of the second class duly organized under the laws in force for that purpose. [Id. § 2.]

#### INCORPORATION AND ACTS OF VILLAGES LEGALIZED.

**SEC. 124. [Acts of certain villages legalized.]**—That all villages having more than two hundred inhabitants, who have associated themselves together by written agreement or by petition of a majority of their legal voters, therein designating the object of their association to be the incorporation of a village, under the laws of Nebraska, and showing therein the boundaries of the same, and having a board of trustees elected by a majority of the legal voters of said village, who are acting conformable to the law of the state of Nebraska regulating the powers and duties of the boards of trustees of villages, be and the same are hereby declared to be duly and lawfully organized and incorporated as villages under the laws of this state; and such villages, and their boards of trustees, and the officers by them appointed, and all acts, by-laws and ordinances done and adopted by them are hereby declared to be legal and valid, and shall have all the force and effect given to the acts, by-laws, and ordinances of villages incorporated under the laws of this state. [1881 § 1, chap. 25.]

**SEC. 125. [Effect of act.]**—Such villages shall be governed by the law of this state regulating villages, and shall have and exercise all the powers and privileges of villages duly incorporated under the laws of this state, and their said trustees and officers shall have and exercise all the powers and privileges of trustees and officers, under the laws of this state concerning villages. [Id. § 2.]

### CHAPTER 15.—COMMON LAW.\*

**SECTION 1. [Common law in force.]**—So much of the common law of England, as is applicable and not inconsistent with the constitution of the United States, with the organic law of this territory, or with any law passed or to be pass-

SEC. 122. "An act to continue the organization of cities of the second class, and to legalize their acts and elections thereunder." Approved and took effect Feb. 28, 1881.

SEC. 123. "An act to legalize the incorporation of certain villages, and all acts, by-laws and ordinances thereof, and to constitute its board of trustees a legal body." Approved Mar. 3. Took effect June 1, 1881.

\*NOTE.—Chap. VII R. S. 1866. The common law relative to trespass by stock on uncultivated, uninclosed land is not in force. 10 Neb. 493.

ed by the legislature of this territory is adopted, and declared to be law within said territory.

## CHAPTER 16.—CORPORATIONS.

### INSURANCE COMPANIES.

**SECTION 1. [Statement.]**—It shall be the duty of each and every insurance company incorporated under the laws of this state to file with the auditor of the state a full and specific statement of the amount of cash paid in upon said stock; the amount of stock not paid for in cash; the amount secured by mortgages or pledges of real estate; the names and residences of the stockholders in said company, with the amount of stock owned or held, set opposite the name of each, and if not all paid up in cash, the amount unsecured and the amount secured, specifying whether by real or personal security, also set opposite the name of each; the names of all the officers and agents of the company wherever residing; the amount of policies issued by, and outstanding against the company, at the date of said report; the amount of premiums received by said company during the preceding six months; the amount of cash on hand; the amount of bills payable and receivable at the date of said statement; the amount of real estate owned by said company, where held and owned, and in what manner said real estate became vested in said company; which report and statement shall be verified by the oath of the president and secretary of the company. R. S. 187. G. S. 160.]

**SEC. 2. [Semi-annual statement.]**—It shall be the duty of every insurance company now created, or that may hereafter be created under the laws of this state, to file a semi-annual statement of the affairs of said company, with the auditor of the state, on the first day of January and July in each year, which statement shall be verified by the oath of the secretary of the company. Such statement shall contain—

*First.* The name and locality of the company.

*Second.* The amount of capital stock of said company.

*Third.* The amount of its capital stock paid up.

*Fourth.* The assets of the company, including—

I. The amount of cash on hand.

II. The amount of cash in hands of agents.

III. The real estate unincumbered.

IV. The bonds and notes of the company, and how they are secured, with the rates of interest thereon, and whether given in payment of stock subscription, or for *bona fide* loans.

V. Debts of the company secured by mortgage.

VI. Debts otherwise secured.

VII. Debts for premiums.

VIII. All other securities.

*Fifth.* The amount of liabilities due or not due to banks or other creditors by the company.

*Sixth.* Losses adjusted and due.

*Seventh.* Losses adjusted and not due.

*Eighth.* Losses unadjusted.

*Ninth.* Losses in suspense.

*Tenth.* All other claims against the company.

*Eleventh.* The greatest amount insured by any one risk.

And the auditor shall cause a brief abstract of such statement to be published in at least one newspaper at the capital of the state, and such company shall pay for said publication.

**SEC. 3. [Penalty.]**—A failure to comply with the provisions of the two preceding sections, shall subject the president and secretary of any company, each, individually, to the penalty of one hundred dollars, to be recovered in an action at

law in the name of any citizen of the state, one-half of the same to the use of the state, and the other moiety to the use of the informer.

**SEC. 4. [Real estate.]**—It is declared unlawful for any insurance company in this state, to purchase or hold any real estate, save what shall be necessary for the transaction of its legitimate business of insurance; and deeds and conveyances to said company, for any other purposes, are hereby declared to be void.

**SEC. 5. [Foreign companies.]**—It shall not be lawful for any agent or agents of any insurance company, incorporated by any other state or territory, directly or indirectly, to take risks or transact any business of insurance in this state without first procuring a certificate from the auditor of the state; and before obtaining such certificate, such agent or agents shall furnish the auditor with a statement, under the oath of the president or secretary of the company for which he or they may act, which statement shall show—

*First.* The name and locality of the company.

*Second.* The amount of its capital stock.

*Third.* The amount of its capital stock paid up.

*Fourth.* The assets of the company, including—

I. The amount of cash on hand, and in the hands of agents and other persons.

II. The real estate unincumbered.

III. The lands owned by the company, and how they are secured, with the rate of interest thereon.

IV. The debts of the company secured by mortgage.

V. Debts otherwise secured.

VI. Debts for premiums.

VII. All other securities.

*Fifth.* The amount of liabilities due or not due to banks or other creditors by the company.

*Sixth.* Losses adjusted and due.

*Seventh.* Losses adjusted and not due.

*Eighth.* Losses unadjusted.

*Ninth.* Losses in suspense, waiting for further proof.

*Tenth.* All other claims against the company.

*Eleventh.* The greatest amount insured by any one risk.

*Twelfth.* The greatest amount allowed by the rules of the company to be insured in any one city, town or village.

*Thirteenth.* The greatest amount allowed to be insured in any one block.

*Fourteenth.* The act of incorporation of such company.

Which statement shall be filed in the office of said auditor, together with a written instrument under the seal of the company, signed by the president and secretary, authorizing such agent to acknowledge service, consenting that service of process upon such agent shall be taken and held to be as valid as if served upon the company, according to the laws of the state, or any state or territory, and waiving all claims of errors by reason of such service; and no insurance company, or agents of any insurance company, incorporated by any other state or territory, shall transact any business of insurance in this state, unless such company is possessed of at least one hundred thousand dollars of actual capital, invested in stocks of at least par value, or in bonds or mortgages on real estate worth double the amount for which the same is mortgaged; and upon filing the aforesaid statement and instrument with the auditor of the state, and furnishing him with satisfactory evidence of such instrument, as aforesaid, it shall be the duty of said auditor to issue a certificate thereof, with authority to transact business of insurance, to the agent or agents applying for the same; and the auditor may demand and receive two dollars for every such certificate, to be paid by the company.

**SEC. 6. [Additional statement.]**—It shall be unlawful for any incorporated company or association, partnership, firm or individual, or any member or agent or agents thereof, or for any agent or agents of any company incorporated

ed by the legislature of this territory is adopted, and declared to be law within said territory.

## CHAPTER 16.—CORPORATIONS.

### INSURANCE COMPANIES.

**SECTION 1. [Statement.]**—It shall be the duty of each and every insurance company incorporated under the laws of this state to file with the auditor of the state a full and specific statement of the amount of cash paid in upon said stock; the amount of stock not paid for in cash; the amount secured by mortgages or pledges of real estate; the names and residences of the stockholders in said company, with the amount of stock owned or held, set opposite the name of each, and if not all paid up in cash, the amount unsecured and the amount secured, specifying whether by real or personal security, also set opposite the name of each; the names of all the officers and agents of the company wherever residing; the amount of policies issued by, and outstanding against the company, at the date of said report; the amount of premiums received by said company during the preceding six months; the amount of cash on hand; the amount of bills payable and receivable at the date of said statement; the amount of real estate owned by said company, where held and owned, and in what manner said real estate became vested in said company; which report and statement shall be verified by the oath of the president and secretary of the company. R. S. 187. G. S. 160.]

**SEC. 2. [Semi-annual statement.]**—It shall be the duty of every insurance company now created, or that may hereafter be created under the laws of this state, to file a semi-annual statement of the affairs of said company, with the auditor of the state, on the first day of January and July in each year, which statement shall be verified by the oath of the secretary of the company. Such statement shall contain—

- First.* The name and locality of the company.
- Second.* The amount of capital stock of said company.
- Third.* The amount of its capital stock paid up.
- Fourth.* The assets of the company, including—
  - I. The amount of cash on hand.
  - II. The amount of cash in hands of agents.
  - III. The real estate unincumbered.
  - IV. The bonds and notes of the company, and how they are secured, with the rates of interest thereon, and whether given in payment of stock subscription, or for *bona fide* loans.
  - V. Debts of the company secured by mortgage.
  - VI. Debts otherwise secured.
  - VII. Debts for premiums.
  - VIII. All other securities.
- Fifth.* The amount of liabilities due or not due to banks or other creditors by the company.
- Sixth.* Losses adjusted and due.
- Seventh.* Losses adjusted and not due.
- Eighth.* Losses unadjusted.
- Ninth.* Losses in suspense.
- Tenth.* All other claims against the company.
- Eleventh.* The greatest amount insured by any one risk.

And the auditor shall cause a brief abstract of such statement to be published in at least one newspaper at the capital of the state, and such company shall pay for said publication.

**SEC. 3. [Penalty.]**—A failure to comply with the provisions of the two preceding sections, shall subject the president and secretary of any company, each, individually, to the penalty of one hundred dollars, to be recovered in an action at



law in the name of any citizen of the state, one-half of the same to the use of the state, and the other moiety to the use of the informer.

**SEC. 4. [Real estate.]**—It is declared unlawful for any insurance company in this state, to purchase or hold any real estate, save what shall be necessary for the transaction of its legitimate business of insurance; and deeds and conveyances to said company, for any other purposes, are hereby declared to be void.

**SEC. 5. [Foreign companies.]**—It shall not be lawful for any agent or agents of any insurance company, incorporated by any other state or territory, directly or indirectly, to take risks or transact any business of insurance in this state without first procuring a certificate from the auditor of the state; and before obtaining such certificate, such agent or agents shall furnish the auditor with a statement, under the oath of the president or secretary of the company for which he or they may act, which statement shall show—

*First.* The name and locality of the company.

*Second.* The amount of its capital stock.

*Third.* The amount of its capital stock paid up.

*Fourth.* The assets of the company, including—

I. The amount of cash on hand, and in the hands of agents and other persons.

II. The real estate unincumbered.

III. The lands owned by the company, and how they are secured, with the rate of interest thereon.

IV. The debts of the company secured by mortgage.

V. Debts otherwise secured.

VI. Debts for premiums.

VII. All other securities.

*Fifth.* The amount of liabilities due or not due to banks or other creditors by the company.

*Sixth.* Losses adjusted and due.

*Seventh.* Losses adjusted and not due.

*Eighth.* Losses unadjusted.

*Ninth.* Losses in suspense, waiting for further proof.

*Tenth.* All other claims against the company.

*Eleventh.* The greatest amount insured by any one risk.

*Twelfth.* The greatest amount allowed by the rules of the company to be insured in any one city, town or village.

*Thirteenth.* The greatest amount allowed to be insured in any one block.

*Fourteenth.* The act of incorporation of such company.

Which statement shall be filed in the office of said auditor, together with a written instrument under the seal of the company, signed by the president and secretary, authorizing such agent to acknowledge service, consenting that service of process upon such agent shall be taken and held to be as valid as if served upon the company, according to the laws of the state, or any state or territory, and waiving all claims of errors by reason of such service; and no insurance company, or agents of any insurance company, incorporated by any other state or territory, shall transact any business of insurance in this state, unless such company is possessed of at least one hundred thousand dollars of actual capital, invested in stocks of at least par value, or in bonds or mortgages on real estate worth double the amount for which the same is mortgaged; and upon filing the aforesaid statement and instrument with the auditor of the state, and furnishing him with satisfactory evidence of such instrument, as aforesaid, it shall be the duty of said auditor to issue a certificate thereof, with authority to transact business of insurance, to the agent or agents applying for the same; and the auditor may demand and receive two dollars for every such certificate, to be paid by the company.

**SEC. 6. [Additional statement.]**—It shall be unlawful for any incorporated company or association, partnership, firm or individual, or any member or agent or agents thereof, or for any agent or agents of any company incorporated

publish an agency for any such company, a copy of the statement required to be filed with the auditor of the state as aforesaid, together with a certificate of such auditor, which shall be carefully preserved for public inspection by said clerk; and said statement and certificate shall be published one week in one daily and four weeks in one weekly newspaper printed and published in the county in which such agent or agents has or have his or their office of business as such agents; and if no daily paper is published in such county, then such publication shall be sufficient if made in one weekly newspaper as aforesaid, but if no weekly newspaper be printed or published in such county, then such publication shall be made in one weekly newspaper of this state of most general circulation in such county.

COLLEGES, UNIVERSITIES, NORMAL SCHOOLS, ACADEMIES, ETC.

**SEC. 15. [How incorporated.]**—Any number of persons, not less than five, desiring to establish a college, university, normal school, or other institution for the purpose of promoting education, religion, morality, agriculture or the fine arts, may, by complying with the provisions of this subdivision, become a body-corporate and politic with perpetual succession, and may assume a corporate name by which they may sue and be sued, plead and be impleaded in all courts of law and equity; may have a corporate seal, and the same alter and break at pleasure; may hold all kinds of estate, real, personal or mixed, which they may acquire by purchase, donation, devise, or otherwise, necessary to accomplish the objects of the incorporation, and the same to dispose of and convey at pleasure.

**SEC. 16. [Value of property.]**—To ascertain the property and value thereof, of any institution desirous of becoming a body-corporate, under the provisions of this subdivision, it shall be the duty of the probate judge of any county of this state, on application in writing, of any number of persons not less than five, of whom not less than five shall be resident freeholders of the county where such application is made, or where such institution is or is intended to be located, setting forth the objects for which they desire to become incorporated, to select three disinterested freeholders of the county and voters therein, as appraisers, who shall first take an oath for the faithful discharge of their duties, before some competent officer, and such appraisers shall then proceed to make a schedule, and upon actual view to appraise the true value, in money, of all such goods, chattels, lands and tenements, choses in action, rights, credits and subscriptions, as such applicants shall exhibit to such appraisers, and shall return such schedule with their appraisement, and certificate of some officer authorized to administer oaths, that such appraisers were first duly sworn by him to discharge their duties as such appraisers, to the probate judge of the proper county; and if the amount so found shall be equal to the sum required for the commencement of any such institution as said applicants desire, such probate judge shall give such applicants a certificate of the fact, and they shall enter it in a book of records, by them provided for that purpose, which certificate, together with the corporate name and the articles of association, they shall also cause to be recorded in the county clerk's office of the county where such institution is or is intended to be located, and they shall thenceforward be a body-corporate and politic, according to the provisions of this subdivision; and such probate judge, appraisers and county clerk shall be entitled to the same fees as for like services in other cases, and no more.

**SEC. 17. [Trustees.]**—The corporators of any college or university, which may be organized in accordance with the provisions of this subdivision, may elect five or more trustees, of whom not less than five shall be resident freeholders of the county where such college or university is located, who shall constitute a board of directors for such institution, and they shall have power to fill vacancies that may occur in their board, and shall hold their offices until their successors are elected and qualified according to the rules and by-laws that may be adopted by the board of trustees, but at all times at least five of such board of trustees shall

be residents, freeholders of the county where such institution is located; and when any such board, in their corporate name, shall have acquired for the benefit of such institution five thousand dollars, in real and personal property, to be ascertained as herein provided, said trustees shall have power to appoint a president, professors, tutors, and teachers, and any other necessary agents and officers, and fix the compensation of each, and may enact such by-laws not inconsistent with the laws of this state or the United States, for the government of the institution, and for conducting the affairs of the corporation, as they may deem necessary, and shall have power to confer, on the recommendation of the faculty, all such degrees and honors as are conferred by colleges and universities of the United States, and such others, having reference to the course of study and the accomplishment of the student, as they may deem proper.

**SEC. 18. [Failure to elect.]**—In case it should happen that an election for directors should not be held on the day appointed by the by-laws of any institution or company formed under the provisions of this subdivision, such corporation shall not, for that reason, be deemed to be dissolved, but it shall be lawful on any other day to hold a meeting and elect its directors in such manner as shall be prescribed by the by-laws thereof.

**SEC. 19. [Devises and donations.]**—The trustees of any university, college or academy, may hold in trust, any property devised, bequeathed, or donated to such institution, upon any specific trust, consistent with the object of said corporation.

**SEC. 20. [Faculty.]**—The president and professors shall constitute the faculty of any literary college or university instituted under the provisions of this subdivision, and have power to enforce the rules and regulations enacted by the trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary.

**SEC. 21. [Academy.]**—When any number of persons shall have procured by subscription, donation, devise, purchase, or otherwise, the sum of five hundred dollars, for the purpose of establishing and sustaining an academy, such persons may adopt a corporate name and enter the same in the county clerk's office of the proper county, and proceed to the election of such officers and teachers as they may deem necessary; may, in their corporate name, sue and be sued, plead and be impleaded, in any court of law or equity of competent jurisdiction, and may have a corporate seal, may purchase and hold personal or real estate, and dispose of the same at pleasure, and do all other acts and things necessary for the promotion of education and the general interests of such academy.

**SEC. 22. [Existing corporations.]**—Any college, university or academy, now instituted, may come under the provisions of this subdivision by complying with the requisitions herein contained, and all such institutions now in existence, or that may hereafter be established, may connect therewith, to be used as a part of their course of education, any mechanical shops, or machinery, or lands for agricultural purposes, not exceeding three hundred and twenty acres, to which may be attached all necessary buildings for carrying on the mechanical or agricultural purposes of such institution.

**SEC. 23. [Increase of capital stock.]**—Any company which may be formed in pursuance of this subdivision, or which may now exist by virtue of any special act of incorporation, the property of which is held as stock, and not derived by donation, gift, devise or gratuitous subscription, may increase its capital stock or change it into scholarships, when it becomes necessary for the purpose of carrying out the object for which such company or corporation is formed, in the following manner: The directors, for the time being, shall make out and sign a certificate in which they shall set forth the amount to which such capital stock is to be increased, and the object, which certificate shall be deposited in the office of the county clerk of the proper county, and be by him recorded in the same manner as the articles of association and corporate name are required by this subdivision to be recorded.

**Sec. 24. [Notice.]**—Before the capital stock of such company shall be increased, it shall be the duty of the directors to publish a notice, signed by at least a majority of them, in a newspaper of general circulation in the county in which such institution is located, at least four consecutive weeks, appointing a time and place for holding a meeting of the stockholders of the said company, specifying the amount to which it is proposed to increase the capital stock thereof; and a vote of at least two-thirds of the shares of the stock represented at such meeting, shall be necessary to an increase of its capital stock, and to authorize the directors to make and sign the certificate mentioned in the preceding section.

**Sec. 25. [Liability of stockholders.]**—Any university, college or academy that may become a body corporate under the provisions of this subdivision, the property of which is not derived by donation, gift, devise or subscription, but is owned by individuals in the shape of stock subscribed or taken, the owners of said stock shall be individually liable for the debts of said corporation to the amount of their stock respectively, and also in a sum equal thereto, over and above the amount of their stock; *Provided*, That the trustees or directors of any corporation organized under the provisions of this subdivision, the property of which is not owned by individuals in the shape of stock subscribed or taken, but is held upon trust or derived by devise, donation, gift, or subscription, shall not contract any indebtedness beyond the actual means or assets of said corporation, and if said trustees or directors contract debts or incur liabilities beyond the actual means or assets of said corporation, the trustees or directors, so contracting, shall be held liable in their individual capacity for the payment of the same, but the property of said corporation shall first be exhausted.

**Sec. 26. [Trustees of endowment fund.]**—Whenever three or more persons shall desire to create a board of trustees, to become incorporated as the trustees of an endowment fund for any educational, religious or charitable purpose, they shall do so in the following manner, to wit: Whenever, at any meeting called for the purpose, the said persons, at least three of whom shall be residents of this state, not less than three in number, as aforesaid, shall resolve to become a body corporate and politic, having a seal and corporate name, whereby they may sue and be sued in courts of justice in this state, they shall prepare a statement, setting forth the name by which they shall be called, the amount of said fund, and the manner in which and the district to which the said fund shall be applied, whether within or without this state, together with the names of the persons who shall act as trustees, which said statement shall be subscribed by all the persons composing said meeting, in the presence of some magistrate, or judicial officer having a seal, who shall attest the signing of the same, and the same shall be recorded in the office of the county clerk in the county where said meeting was held, and thereupon the persons named in said statement as trustees, and their successors in office, shall become a body corporate and politic for the purposes in said statement named and specified; and a certified copy of said record, under the hand and seal of the county clerk of said county, shall at all times be *prima facie* evidence of the existence of said corporation. [Amended 1871, 105.]

**Sec. 27. [Application of fund—How changed.]**—In any case where, in the original statement in the preceding section provided for, it is contemplated that the fund may be applied to any object, not inconsistent with the purposes of education, religion or charity, different from that particularly specified in said statement, the trustees above named, or their successors in office, may apply to the district court in the county where the record hereinbefore provided for was made, for the privilege to make such change, designating particularly the purposes to which it is proposed to apply the same; and the said court, on being satisfied that such change is not inconsistent with the object of the original creation and institution of said fund, shall authorize and sanction such change.

**Sec. 28. [Trustees a body politic.]**—The said board of trustees and their successors in office, shall be a body politic with perpetual succession, and they shall hold their offices for such terms and receive their appointments in such

manner as shall be designated in the statement on record in the office of the county clerk, as hereinbefore provided.

#### BRIDGE COMPANIES.

**SEC. 29. [How formed.]**—Whenever any number of persons, not less than five, associate themselves together for the purpose of constructing a bridge over any of the streams of water in this state, they shall, under their hands and seals, make a certificate specifying the amount of capital stock necessary, the amount of each share, the place where such bridge is to be built, and on what stream; and said certificate shall be acknowledged, certified, and forwarded to the secretary of state, and by him recorded and copied; and when so incorporated, they are hereby authorized to carry on the operations named in said certificate of incorporation, and by the name and style provided in such certificate, shall be deemed a body corporate with succession, and they and their associates, successors and assigns shall have the same general corporate powers, and be subject to all restrictions hereafter provided; but in all cases the banks on both sides of the stream where the said bridge is to be erected, shall be owned by said company, or they shall obtain in writing the consent of the owner or owners of the banks where the said bridge is to be erected, to erect the said bridge as aforesaid, unless the said banks at such point shall be in a public highway.

**SEC. 30. [Opening books.]**—The corporators herein named shall open the books of said company for subscription to the capital stock of said bridge, and so soon thereafter as ten per cent. of the capital shall be subscribed, they shall call a meeting of the persons who have subscribed stock as aforesaid, and shall then and there proceed to elect five directors, who shall be stockholders in said company, who shall hold their offices as such directors for one year from and after said election, and until their successors are elected and qualified, one of whom shall be president, one treasurer, and one secretary, to be named on the tickets when voted for by the stockholders as aforesaid; each stockholder shall be entitled to one vote for each and every share of stock he may own; and after the first election no stockholder shall be entitled to a greater number of votes than the number of shares he may have paid into the said company.

**SEC. 31. [Treasurer to give bond.]**—The treasurer of said company before entering upon his duties of office, shall enter into a bond with good and sufficient security, to be approved by said board of directors, payable to the said company, conditioned for the faithful performance of all and singular the duties of his said office, and that he will well and truly account for and pay over to the said company all moneys and property that shall, from time to time, come into his hands by virtue of his said office, and that he will use due and proper diligence to collect all moneys and demands that from time to time shall be due and owing to the said company, which it shall be his duty by law to collect.

**SEC. 32. [Duties of president.]**—The president shall preside at all meetings when present and not otherwise incapacitated, in which case, or in case of his absence, the board of directors shall choose a president from among their number, who shall perform the duties of the president at such meeting, and perform such duties as may from time to time be pointed out by the by-laws and rules of said company.

**SEC. 33. [Duties of secretary.]**—The secretary shall keep a record of all meetings of the board of directors and other proceedings of said company, not required to be performed by any other officers of the said board of directors, and perform such other and further duties as may be assigned him from time to time by the rules and by-laws of the said company.

SEC. 29. A company incorporated with the exclusive privilege to establish and keep a ferry and wagon bridge across a river, within a certain district, that stands by and silently permits other parties to construct a bridge within the same district, or acquiescing and consenting to the erection thereof, are estopped from controverting, by injunction or otherwise, the right of the other parties to use and repair such bridge. 6 Neb. 18.

SEC. 30. As to the method of election, see Const., Art. XI, sec. 5, ante p. 34. The bridge of a company having an exclusive franchise was destroyed, and a resolution passed not to build unless aided by subscriptions. F. subscribed. Afterwards the location of the bridge was changed about a mile away from the former location, to which F. did not assent. Held, that he was not liable. 8 Neb. 103.

**SEC. 34. [By-laws.]**—The said company shall have power, from time to time, at any regular meeting of the board of directors, to make, alter, and change such by-laws and rules for the government of the said company.

**SEC. 35. [Rates of tolls.]**—The company, previous to receiving any tolls upon said bridge, shall set up and keep in a conspicuous place, a board on said bridge, on which shall be written, painted or printed, in a plain and legible manner, the rates of toll, which rates of toll shall have been prescribed by the district court of the proper county; and if any company shall demand or receive any greater rates of toll than the rate prescribed by said court, they shall be subject to a fine of ten dollars for each offense.

**SEC. 36. [Compensation of officers.]**—The compensation of the president and other officers of such company shall be regulated and fixed by the rules and by-laws of such company from time to time.

#### MANUFACTURING COMPANIES.

**SEC. 37. [How formed.]**—Whenever any number of persons associate themselves together for the purpose of engaging in the business of manufacturing, they shall, under their hands and seals, make a certificate, specifying the amount of capital stock necessary, the amount of each share, the name of the place where such manufacturing establishment shall be located, and the name and style by which such company shall be known; said certificate shall be acknowledged, certified and forwarded to the secretary of state, and by him be recorded and copied; and when so incorporated, they are hereby authorized to carry on the manufacturing operations named in said certificate of incorporation, and by the name and style provided in said certificate, shall be deemed a body corporate with succession, and they and their associates, successors and assigns shall have the same general corporate powers as are conferred in this chapter upon bridge companies, and subject to all the restrictions hereafter provided.

**SEC. 38. [Annual meeting—General powers.]**—The annual meeting of the stockholders shall be held on the first Monday of January in each year, at which meeting the directors of the company shall be elected, and such other lawful business done as the stockholders shall deem necessary and proper; and should they fail to elect directors at the annual meeting, they shall hold a special meeting at some subsequent time for that purpose, by giving thirty days notice thereof in some newspaper of general circulation in such county; the directors shall hold their offices until their successors are chosen and qualified, but no person shall be a director after ceasing to be a stockholder. Immediately after the election, the directors shall elect one of their number president of the corporation, and may appoint such other officers and agents as they may deem proper to transact their business, and prescribe the amount of compensation to be allowed them for their services, and such officers, when required by the by-laws, shall give bonds to the satisfaction of the directors, for the faithful discharge of the trust committed to them, and shall have power and are hereby authorized to make such rules, regulations and by-laws as may be necessary for their government, not inconsistent with the constitution of this state. The directors shall have the general management of the affairs of the company, and may dispose of the residue of the capital stock at any time remaining unsubscribed, in such manner as the stockholders for the time being may prescribe, and may employ the capital and means of the company in such manufactures as they shall deem best for the company, and for the erection and maintenance of such machinery, dams, buildings, races and watercourses, subject always to the control of the stockholders, as may be necessary in the business of manufacturing, but for no other purposes than those connected with and pertaining to said business; they shall cause a record to be kept of all stock subscribed and transferred, and all business transactions, and their books and records shall at all reasonable times be open to the inspection of any and every stockholder; they shall also, when required, present to the stockholders reports, in writing, of the situation and the amount of business of the company,

and declare and make such dividends of the profits from the business of the company, not reducing the capital stock while they have outstanding liabilities, as they shall deem expedient.

**SEC. 39. [Subscription books.]**—The persons named in the certificate of incorporation, or a majority of them, shall be commissioners to open the books for the subscription to the capital stock of said company, and at such times and places as they shall deem proper, and the said company are authorized to commence operations upon the subscription of ten per cent of said stock.

#### RELIGIOUS AND OTHER SOCIETIES.

**SEC. 40. [Officers how elected.]**—It shall be lawful for any religious sect or denomination, fire company, or any literary, scientific, or benevolent associations (other than colleges, universities, academies, or seminaries,) within this state, to elect, at a meeting of a majority of the members of any organized church, fire company, literary, scientific, or benevolent association as aforesaid, called for that purpose, any number of their members, not less than three, to serve as trustees or directors, and one member as clerk, who shall hold their offices during the pleasure of the society or association; *Provided*, That all religious bodies that have in their articles of association, constitution, by-laws, or discipline, provisions for the election of trustees or directors to hold property for the use and benefit of the membership and ministry thereof, may and are hereby authorized to elect such trustees or directors according to such provisions, and that a certificate of such election signed by the president and secretary of such meeting or conference, shall be placed upon the records of the county in which such property is located. [As amended March 1. Took effect June 1, 1881.]

**SEC. 41. [Proceedings to be recorded in the county clerk's office.]**—That the clerk so appointed shall make a true record of the proceedings of the meeting provided for in this subdivision, and certify and deliver the same to the clerk of the county where such meeting shall be held, together with the name by which such church, fire company, or association shall thereafter desire to be known; and it shall be the duty of each county clerk in this state, immediately upon the receipt of such certified statement, to record the same in a book of record to be kept by him, provided for that purpose at the expense of his county, for which service he may demand the sum of ten cents per hundred words; and from and after making such record by the county clerk, the said trustees or directors, and their associated members and their successors, shall be invested with the powers, privileges, and immunities incident to aggregate corporations; and a certified transcript of the record, herein authorized to be made by the county clerk, shall be deemed and taken, in all courts and places whatsoever in this state, as *prima facie* evidence of the existence of such association and corporation.

**SEC. 42. [Power of trustees.]**—The trustees or directors, who may be appointed under the provisions of this subdivision, and their successors in office, shall have perpetual succession by such name as may be designated, and by such name may be legally capable of contracting, and prosecuting and defending suits, and shall have capacity to acquire, hold, enjoy, dispose of, and convey all property, real and personal, which they may acquire by purchase, donation, or otherwise, for the purpose of carrying out the intentions of such society or association, but they shall not acquire or hold property for any other purpose.

**SEC. 43. [Officers.]**—Such society or association, when incorporated, may elect such officers and make such rules and regulations as may be necessary and expedient for its own government, and the management of its fiscal and other affairs to effect their respective objects.

**SEC. 44. [Vacancies.]**—If said board of trustees or directors, as is provided for in this subdivision, shall be vacated, either in whole or in part, by death, resignation or otherwise, such board of trustees or directors may be revived, or such vacancy or vacancies filled, in the manner pointed out in this subdivision

for the original organization of said board, and a majority of said trustees or directors shall be quorum for the transaction of business.

#### CEMETERY ASSOCIATIONS.

**SEC. 45. [How incorporated.]**—It shall be lawful for any number of persons, not less than five, who are residents of the county in which they desire to form themselves into an association, to form themselves into a cemetery association, and to elect any number of their members, not less than three, to serve as trustees, and one member as clerk, who shall continue in office during the pleasure of the society; all such elections shall take place at a meeting of a majority of the members of such association, and after notice, for at least twenty days in a newspaper, or by posting at least three written notices at public places in the township.

**SEC. 46. [Record of proceedings.]**—The clerk, hereinbefore authorized to be appointed, shall forthwith make out a true record of the proceedings of the meeting provided for by the preceding section, and certify and deliver the same to the clerk of the county in which such meeting shall be held, together with the name by which such association shall desire to be known; and it shall be the duty of each county clerk in this state, immediately upon the receipt of such certified statement, to record the same in a book by him provided for that purpose, at the expense of the county; and the clerk shall be entitled to the same fees for his services as he is entitled to demand for other similar services; and from and after the making of such record by the county clerk, the said trustees, and their associated members and successors, shall be invested with the powers, privileges, and immunities incident to aggregate corporations; and a certified transcript of the record, herein authorized to be made by the county clerk, shall be deemed and taken in all courts and places whatsoever within this state, as *prima facie* evidence of the existence of such cemetery association.

**SEC. 47. [Powers of trustees.]**—The trustees, who may be appointed under the provisions of this subdivision, shall have perpetual succession, and shall be capable in law of contracting, and prosecuting and defending suits at law and in equity; and, where suits shall be brought against said incorporation, *mesne* process against it may be served by leaving an attested copy thereof with one of the trustees, at least ten days before the return day thereof.

**SEC. 48. [General powers.]**—Such association may have power to prescribe the terms on which members may be admitted, the number of its trustees and other officers (subject to the limitations set forth in this subdivision), and the time and manner of their election and appointment, and the time and place of meeting for the trustees and for the association, and to pass all such other by-laws as may be necessary for the good government of such association, not inconsistent with this or any other statute of the state, nor in violation of the constitution.

**SEC. 49. [Cemetery grounds.]**—Such association shall be authorized to purchase or take, by gift or devise, and hold land exempt from execution and from any appropriation to public purposes, for the sole purpose of a cemetery, not exceeding one hundred acres, which shall be exempt from taxation if used exclusively for burial purposes, and in nowise with a view to profit. After paying for such land, all the future receipts and income of such association, whether from the sale of lots, from donations, or otherwise, shall be applied exclusively to laying out, protecting, preserving and embellishing the cemetery and the avenues leading thereto, and to the erection of such building or buildings as may be necessary for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in the anticipation of future receipts, except for originally purchasing, laying out, inclosing and embellishing the grounds and avenues, for which a debt or debts may be contracted, not exceeding one thousand dollars in the whole, to be paid out of future receipts; and such association shall have power to adopt such rules and regulations as they deem expedient for disposing of and conveying burial lots.



**SEC. 50. [Burial lots—Exemption.]**—Burial lots sold by such association shall be for the sole purpose of interments, and shall be subject to the rules prescribed by the association, and shall be exempt from taxation, execution, attachment, or any other claim, lien or process whatever, if used exclusively for burial purposes and in no wise with a view to profit.

**SEC. 51. [Plat of grounds.]**—Such association shall cause a plat of their grounds, and of the lots by them laid out, to be made and recorded, such lots to be numbered by regular consecutive numbers, and shall have power to inclose, improve and adorn the grounds and avenues, and erect buildings for the use of the association; and to prescribe rules for the inclosing and adorning lots, and for erecting monuments in the cemetery; and to prohibit any use, division, improvement or adornment of a lot which they may deem improper; and an annual exhibit shall be made of the affairs of the association.

**SEC. 52. [Penalty for destruction of property.]**—Any person who shall wilfully destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure placed in any cemetery, or any fence, railing or other work for the protection or ornament of a cemetery, or tomb, monument or gravestone, or other structure aforesaid, or of any cemetery lot within a cemetery, or shall wilfully destroy, cut, break or injure any tree, shrub or plant, within the limits of a cemetery, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof before any court of competent jurisdiction, be punished by a fine of not less than five dollars nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than one day nor more than thirty days according to the nature and aggravation of the offense; and such offender shall also be liable, in an action of trespass in the name of the association, to pay all such damages as have been occasioned by his unlawful act or acts, which money, when recovered, shall be applied to the reparation and restoration of the property destroyed or injured as above; and in all prosecutions and suits under this chapter, members of said association shall be competent witnesses.

**SEC. 53. [Cemetery grounds exempt.]**—Lands appropriated and set apart as burial grounds, either for public or private use, and so recorded in the county clerk's office of the county where such lands are situated, shall not be subject to sale on execution on any judgment to be hereafter recovered, to taxation, to dower, nor to compulsory partition.

#### GENERAL PROVISIONS.

**SEC. 54. [Companies now incorporated may accept provisions of this act.]**—All companies now incorporated in this state, and actually doing business, may accept any of the provisions of this chapter, and when so accepted, and a certified copy of their acceptance filed with the secretary of the state, that portion of their charters inconsistent with the provisions of this chapter is hereby repealed. All companies hereafter incorporated, or accepting the provisions of this chapter, except those named in the fortieth section of this chapter, are required to make and publish in some newspaper of general circulation in the county where the principal office is located, an annual exhibit, showing a full, fair and detailed statement of the condition of such company, which statement shall be verified by the oath of the president, secretary and clerk.

**SEC. 55. [Means to be devoted to object.]**—No company or association incorporated under the provisions of this chapter, shall employ its stock, means, assets or other property, directly or indirectly for any other purpose whatever than to accomplish the legitimate object of its creation.

**SEC. 56. [Reduction of capital stock.]**—The board of directors or trustees of any company heretofore incorporated, or which may hereafter be formed under any law of this state, may, with the written consent of the persons in whose name a majority of the shares of the capital stock thereof shall stand on the books of said company, reduce the amount of the said capital stock, and the nominal value of all the shares thereof, and issue certificates therefor; *Provided*, That the

rights of creditors shall not be affected or in any wise impaired by the reduction of the capital stock of any such corporation.

**SEC. 57. [Extension of charters.]**—Whenever any joint stock company hereafter incorporated for the purpose of erecting any public improvement in this state, whose charter may be limited as to the time of completion of said improvement, and when any such company has been legally organized, and has actually commenced and has in progress toward completion such public improvement, it shall be lawful for any such company to have further time allowed for the final completion of said work, as is hereinafter provided.

**SEC. 58. [Decree of district court.]**—Upon petition being filed by the directors of any corporation, in the district court of the county in which the principal office of such corporation is located, and upon giving thirty days notice, by publication in a newspaper of general circulation in said county, of the object and prayer of such petition, said court shall, at any regular term after the publication of said notice, upon good cause shown, decree the extension of the time for the completion of said improvement, to such period as shall appear to such court just and reasonable.

**SEC. 59. [Failure to elect officers—Meetings.]**—Whenever any company, association or society heretofore or hereafter incorporated, shall have failed to elect its officers at the time designated, it shall be lawful for any such company, association or society, to call a meeting and elect its officers, who shall hold the respective offices until the time specified for the annual or other fixed time for holding such election; and, when any incorporated company heretofore organized, or that may be hereafter organized under the provisions of this chapter, shall have a specified time fixed for its annual meeting, a majority of the stockholders in interest may, at any regular annual meeting, change the time of the annual meeting thereof. [Amended 1869, 20.]

**SEC. 60. [Sale of real estate.]**—When any real estate shall have been or may hereafter be bequeathed, aliened, donated or otherwise entrusted to any religious society in this state, or to any of the trustees or officers of any such society, and such society shall be desirous to sell, exchange or encumber, by mortgage or otherwise, any such real estate, it shall be lawful for the district court of the proper county, upon good cause shown upon petition of any such society, or some person authorized by them, to make an order authorizing the sale or encumbrance of any such real estate, and said court may include in such order directions how the proceeds of such sale or incumbrance shall be appropriated or invested; *Provided*, Such order shall in no case be inconsistent with the original terms upon which such real estate became invested or intrusted to such religious society.

**SEC. 61. [Parties to the proceeding.]**—When any religious society shall petition, as is provided for in the preceding section, all persons who may have a vested, contingent or reversionary interest in the real estate sought to be sold or encumbered, shall be made parties to said petition, and such parties shall be notified of such petition in the same manner as is or may be provided for in cases of petitions for partitions of real estate; *Provided*, That the provisions of this chapter shall not extend to any grounds used or occupied as burial places for the dead.

**SEC. 62. [Dissolved corporation.]**—Upon the dissolution, by the expiration of the term of its charter or otherwise, of any corporation now existing, or hereafter created, and unless other persons be appointed by the legislature, or by some court of competent authority, the directors or managers of the affairs of such corporation, acting last before the time of its dissolution, by whatever name they may be known in law, and the survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same, collect and pay the outstanding debts, and divide among the stockholders the moneys and property that shall remain, in proportion to the stock of each stockholder paid up, after the payment of debts and necessary expenses; and the persons so constituted trustees shall have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its corporate name, and

shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands; and no suit against any such corporation shall abate in consequence of such dissolution, and said trustees may be made parties thereto by *scire facias*; and all liens of judgments and decrees of any courts of chancery, existing at the time of such dissolution, either in favor of or against such corporation, shall continue in force in the same manner as if such dissolution had not taken place; *Provided*, That in case of the death, resignation, inability or refusal to act, of the directors or managers aforesaid, or the survivors thereof, the district court of the proper county may, on the application of any person interested, appoint trustees to fill the vacancy, with full power to perform the duties aforesaid.

**SEC. 63. [Prosecution of actions.]**—No suit or action, either at law or in chancery, pending in any court in favor of or against any banking or other corporation, shall be discontinued or abate by the dissolution of such corporation, whether such dissolution occur by the expiration of its charter or otherwise; but all such suits or actions may, in all courts of justice, be prosecuted by the creditors, assigns, receivers or trustees, having the legal charge of the assets of such dissolved corporation, to final judgment or decree, in the corporate name of such dissolved corporation.

**SEC. 64. [Enforcement of judgments.]**—Upon all judgments and decrees in favor of or against any such corporation, whether such judgments or decrees exist at the time of the dissolution of such corporations or are obtained afterwards, in suits or actions pending at the time of such dissolution, execution may be had, and satisfaction or performance of the same be enforced by the creditors, assigns, receivers or trustees having the legal charge of the assets of such dissolved corporation, in the corporate name of such dissolved corporation.

**SEC. 65. [Title to real estate.]**—The title of all real estate belonging to any such corporation shall, at the time of the dissolution of the same, pass to the trustees of such corporation, who shall have full power and authority to sell and dispose of any such real estate, in such manner and upon such terms as may be thought best for the interest of the creditors and stockholders, and upon any such sale to make a good and sufficient title therefor.

**SEC. 66. [Trustees subject to control of court.]**—The trustees of any such dissolved corporation shall be subject to the control of the court of chancery, and be liable to be sued by petition in chancery, on behalf of any person interested, on account of any neglect or omission of duty, or abuse of trust; and in case of the removal of any such trustee by such court for an abuse of trust, such court shall have the power and authority to appoint a suitable person to fill the vacancy; and any such trustee may, for reasonable cause, upon the application of any creditor or stockholder, be required by the district court to give bond and security in such amount and subject to such conditions as the court may direct.

**SEC. 67. [Suits after dissolution.]**—Any corporation created by this chapter may, at any time after its dissolution, whether such dissolution occur by the expiration of its charter or otherwise, prosecute any suit at law or in equity, in and by the corporate name of such dissolved corporation, for the use of the party entitled to receive the proceeds of any such suit, upon any and all causes of action accrued, or which, but for such dissolution, would have accrued in favor of such corporation, in the same manner and with the like effect as if such corporation were not dissolved.

**SEC. 68. [Dissolved corporation may be sued.]**—Any such dissolved corporation may be sued at law or in equity, in and by its corporate name, for or upon any cause of action accrued, or which but for such dissolution would have accrued against such corporation, in the same manner and with the like effect as if such corporation were not dissolved, and all process by which any suit, either at law or in equity, may be instituted against any such dissolved corporation may be served by the sheriff or any other proper officer, by delivering to any one of the assignees, trustees, receivers or persons having charge of the assets of such dis-

solved corporation, a copy thereof, or by leaving such copy at the residence of any such assignee, trustee, receiver or person having charge of such assets.

SEC. 69. [**Revivor.**].—Judgments and decrees, in favor of or against any such dissolved corporation, whether such judgments and decrees were rendered before or after such dissolution, and which have heretofore, or may at any time hereafter become dormant, may be revived in favor of or against such dissolved corporation, as the case may be, in and by the corporate name of such dissolved corporation, in the same manner and with the like effect as if such corporation were not dissolved; and in all cases of judgments or decrees against any such corporation the writ of *scire facias*, or other proper process, shall be served in the manner prescribed in the preceding section for the process in suits against dissolved corporations.

SEC. 70. [**Errors.**].—Writs of error upon judgments at law may be sued out, and bills of review in chancery may be exhibited, in favor of or against any such dissolved corporation, and by its corporate name, in the same manner and with the like effect as if such corporation were not dissolved and process thereon against any such dissolved corporation shall be served in the manner prescribed in this subdivision.

SEC. 71. [**Construction of chapter.**].—Nothing in this chapter contained shall at any time be construed as extending or reviving the charter of any banking or other corporation, dissolved either by affluxion of time or otherwise, for any other purpose than that of judicial proceedings, in favor of or against the same.

#### RAILROAD COMPANIES.

SEC. 72. [**How incorporated.**].—Any number of natural persons, not less than five, may become a body corporate, with all the rights, privileges and powers conferred by, and subject to all the restrictions of this subdivision.

SEC. 73. [**Proceedings.**].—Any number of persons as aforesaid, associating to form a company for the purpose of constructing a railroad, shall, under their hands, make a certificate, which shall specify as follows: *First.* The name assumed by such company and by which it shall be known. *Second.* The names of the places of the termini of said road, and the county or counties through which said road shall pass. *Third.* The amount of capital stock necessary to construct such road. Such certificate shall be acknowledged before a notary public, and certified by the clerk of the district court in the same manner as is provided for the conveyance of real estate, and shall be forwarded to the secretary of state, who shall record and carefully preserve the same in his office; and a copy thereof, duly certified by said secretary, under the seal of the state, shall be *prima facie* evidence of the existence of such corporation.

SEC. 74. [**When corporation deemed organized.**].—When the foregoing provisions have been complied with, the persons named as corporators in said certificate are hereby authorized to carry into effect the objects named in such certificate in accordance with the provisions of this subdivision, and they, and their associates, successors, and assigns, by the name and style provided in said certificate, shall thereafter be deemed a body corporate, with succession, with power to sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey at pleasure all such real and personal estate as may be necessary and convenient to carry into effect the objects of the corporation; to make and use a common seal, and the same to alter at pleasure, and to do all needful acts to carry into effect the objects for which it was created. And such company shall possess all the powers and be subject to all the rules and restrictions provided by this subdivision.

RAILROADS.—*Bills of Lading*, liability for issuance of, assigned to third party who advances money on them. 10 Neb. 556. *Contracts*. Under the provision of this subdivision, a corporation organized for the purpose of building a railroad, has no power to sell or dispose of its property or franchises until the road has been constructed. 4 Neb. 464. Such contract is against public policy and cannot be enforced. 5 Neb. 320. *Duty of company* accepting grant of land from the state. 7 Neb. 374. *Land exploring tickets*, rules regulating sale of, and rights of purchaser. 10 Neb. 250. *Negligence*, decisions concerning. 2 Neb. 336. 4 Id. 449. 7 Id. 485. *Remote damages*. 3 Neb. 54. 4 Id. 275. *Speed of trains in city or village*. 2 Neb. 335. *Stockholder*, liability of. 4 Neb. 275. *Taxation of railroad lands*. 5 Neb. 393. And see 8 Neb. 251. Chapter 72, *post*.

**SEC. 75. [May construct railroad.]**—Such corporation shall be authorized and empowered to lay out, locate, construct, furnish, maintain, operate and enjoy a railroad with single or double tracks, with such side tracks, turnouts, offices and depots as shall be necessary, between the places of the termini of the said road, commencing at or within, and extending to or into any town, city, or village, named as the termini of said road, and construct branches from the main line to other towns or places within the limits of this state. [Amended 1871, 104.]

**SEC. 76. [Capital stock.]**—The capital stock of such company shall be divided into shares of one hundred dollars each, and consist of such sum as may be named in the certificate; such shares shall be regarded as personal property, and shall be subject to sale or transfer, and to execution at law.

**SEC. 77. [Installments.]**—An installment of ten per cent. on each share of stock, shall be payable at the time of making the subscription, and the residue thereof shall be paid in such installments and at such times and places as may be required by the directors of such company.

**SEC. 78. [Collection of unpaid installments.]**—If any installment of stock shall remain unpaid for sixty days after the time it may be required or specified in the call by order of the board of directors, whether the said stock is held by an assignee, transferee, or original subscriber, the same may be collected by action of debt, or the directors may, at their election, serve upon such stockholder, in case he shall be a resident of the state, thirty days notice in writing, that such installment has been due and unpaid for the term aforesaid, or in case such stockholder shall be a non-resident of this state, publish in some newspaper printed at the capital of this state, and of general circulation in this state, a like notice that such installment has been due and unpaid for the term aforesaid; and if the said installment shall not be paid, with all the charges and expenses incurred in the proceedings hereby prescribed, within ninety days after the service of notice or the last publication provided for as aforesaid, the said stock, and all the right, title and interest of the said assignee, transferee, or original subscriber therein, shall, by virtue of such failure, and without further action by such company, become forfeited, and may be disposed of by said company as it sees proper.

**SEC. 79. [Increase of capital stock.]**—Whenever any railroad company heretofore incorporated or created or incorporated under the provisions of this subdivision, shall, in the opinion of the directors thereof, require an increased amount of capital stock, they shall, when authorized by the holders of a majority of capital stock, file with the secretary of state, a certificate setting forth the amount of such desired increase, and shall give public notice of such increase of the capital stock of such company by publishing the same for sixty days in a newspaper published in the county in which it maintains its public and principal office, and thereafter such company shall be entitled to have such increased capital as is fixed by said certificate. [Amended 1879, 79.]

**SEC. 80. [Opening subscription books—Election of directors.]**—The persons named in said certificate of incorporation, or any three of them, shall be authorized to order books to be opened for receiving subscriptions to the capital stock of said company, at such time or times, and at such place or places as they may deem expedient, after having given at least thirty days notice in a newspaper published or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books; and so soon as ten per centum on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place as they may designate, for the purpose of choosing seven directors, who shall continue in office until the time fixed for the annual election, and until their successors are chosen and qualified. At the time and place appointed, directors shall be chosen by ballot by such of the stockholders as shall attend for that purpose, either in person or by lawful proxies. Each share shall entitle the owner to one vote, and a plurality of

votes cast at such election shall be necessary for a choice; but after the first election for directors, no person shall vote on any share on which any installment is due and unpaid. The persons named in such certificate, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting. A majority of said directors shall form a board, and be competent to fill vacancies therein, make by-laws not inconsistent with the provisions of this subdivision or the laws of this state, and alter the same at pleasure, and transact all business of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine, or as the by-laws of the corporation may require; and the directors chosen at any election shall, so soon thereafter as may be convenient, choose one of their number to be president, and shall appoint a secretary and treasurer of the corporation. The directors shall, from time to time, make such dividends of the profits of the said company as they may think proper, and the said by-laws and all alterations and revisions thereof shall be recorded and preserved in the office of the secretary of state, in the same manner as the certificate provided for in section seventy-three of this chapter.

**SEC. 81. [Exercise of the right of eminent domain.]**—Such corporation is authorized to enter upon any land for the purpose of examining and surveying its railroad line, and may take, hold, and appropriate so much real estate as may be necessary for the location construction and convenient use of its road, including all necessary grounds for stations, buildings, workshops, depots, machine-shops, switches, side-tracks, turn-tables and water-stations; all materials for the construction and repair of said road and its appurtenances; and a right of way over adjacent lands, sufficient to enable such company to construct and repair its road, and a right to conduct water by aqueducts, and the right of making proper drains; *Provided*, That the lands held, taken and appropriated, otherwise than by the consent of the owner, shall not exceed two hundred feet in width, except for wood and water stations, and depot grounds, unless where greater width is necessary for excavations, embankments, or depositing waste earth; *Provided further*, That no appropriation of private property, for the use of any corporation provided for in this subdivision, shall be made, until full compensation therefor be first made or secured to the owners thereof.

**SEC. 82. [Change of location and grade.]**—Whenever any railroad company, heretofore incorporated, or which may hereafter be incorporated, shall find it necessary, for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the grade or location of any portion of their road, whether heretofore made, or hereafter to be made, such railroad companies shall be and are hereby authorized to make such changes of grade and location, not departing from their general route. And for the purpose of making any such change in the location and grades of any such roads as aforesaid, such company shall have all the rights, powers and privileges to enter upon, and appropriate such lands, and make surveys necessary to effect such changes and grades, upon the same terms, and be subject to the same obligations, rules and regulations as are prescribed by law; and shall also be liable in damages, when any may have been caused by such change, to the owner or owners of lands upon which such road was heretofore constructed, to be ascertained and paid, or deposited as herein provided; but no damages shall be allowed, unless claimed within ninety days after actual notice in writing of such intended change shall be given to such owner or owners residing on the premises, or notice by publication in some newspaper in general circulation in the county, if non-resident.

**SEC. 83. [Occupation of streets, alleys, etc.]**—If it shall be necessary, in the location of any part of any railroad, to occupy any road, street, alley, or public way or ground of any kind, or any part thereof, it shall be competent for

SEC. 81. This section does not prevent the company from purchasing, with the consent of the owner, all the land they may require for side tracks and depot grounds. 7 Neb. 37.

the municipal or other corporation or public officer or public authorities, owning or having charge thereof, and the railroad company, to agree upon the manner, and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon and it shall be necessary, in the judgment of the directors of such railroad company, to use or occupy such road, street, alley or other public way or ground, such company may appropriate so much of the same as may be necessary for the purposes of such road, in the same manner and upon the same terms as is provided for the appropriation of the property of individuals by the eighty-first section of this chapter.

**SEC. 84. [Borrowing money.]**—Such company shall have power to borrow money on the credit of the corporation, and may execute bonds or promissory notes therefor, and to secure the payment thereof, may pledge the property and income of such company.

**SEC. 85. [Rights of way.]**—Such company may acquire, by purchase or gift, any lands in the vicinity of said road, or through which the same may pass, so far as the same may be deemed convenient or necessary by said company to secure the right of way to such as may be granted to aid in the construction of such road, and the same to hold or convey in such manner as the directors may prescribe; and all deeds and conveyances made by such company shall be signed by the president under the seal of the corporation, and any existing corporation may accept the provisions of this subdivision, by filing in writing their acceptance thereof, under the seal of said corporation, in the office of the secretary of state. And upon filing such acceptance, such corporation shall, from the date thereof, succeed to, and become invested with all the rights, privileges, immunities and powers conferred by this subdivision, without reorganizing. The said secretary shall record and preserve such acceptance in his office, and a copy thereof, duly certified by said secretary, under the seal of the state, shall be evidence in all the courts of this state of such acceptance.

**SEC. 86. [Crossing roads and streams.]**—Any railway company may construct and carry their railroad across, over, or under any road, railroad, canal, stream, or water-course, when it may be necessary in the construction of the same; and in such cases, said corporation shall so construct their railroad crossings as not unnecessarily to impede the travel, transportation, or navigation upon the road, railroad, canal, stream, or water-course so crossed. Said corporation shall have the right to change the channel of any stream or water-course from its present location or bed, whenever it may be necessary in the location, construction or use of their said road, provided they do not change its general course, or materially impair its former usefulness.

**SEC. 87. [Office.]**—Such corporation shall, upon commencing business, establish an office at some point on the line of its road, and may change the same at pleasure.

**SEC. 88. [Annual report.]**—Each and every railroad company, incorporated under this subdivision, and such as shall hereafter accept the same, shall annually, in the month of January, make, upon the oath of the president, secretary or treasurer, a full report of the condition of its affairs to the auditor of the state, showing the amount of the capital stock of such company, the gross amount of receipts during the previous year, the cost of repairs and incidental expenses, the net amount of profits, and the dividends made, with such other facts as may be necessary to a full statement of the affairs and condition of such road; and the auditor shall incorporate an abstract thereof in his annual report to the legislature.

**SEC. 89. [Consolidation.]**—Whenever the lines of railroad of any railroad companies in this state, or any portion of such lines, have been or may be constructed, so as to admit the passage of burden or passenger cars over any two or more of such roads continuously, without break of gauge or interruption, such companies are hereby authorized to consolidate themselves into a single corporation, in the manner following: The directors of the said two or more corpora-

tions may enter into an agreement, under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the number of the directors thereof, which shall not be less than seven; the time and place of holding the first election of directors; the number of shares of capital stock in the new corporation; the amount of each share; the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation; the manner of compensating stockholders in each of said two or more corporations, who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporations shall possess all the powers, rights, and franchises conferred upon such said two or more corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of this subdivision; *Provided*, That all stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation, shall be paid the market value of said stock, at the date of such consolidation.

**SEC. 90. [Approval by stockholders].**—Such agreement of the directors shall not be deemed to be the agreement of the said two or more corporations until after it has been submitted to the stockholders of each of the said corporations separately, at a meeting thereof, to be called upon a notice of at least ninety days, specifying the time and place of such meeting, and the object thereof, to be addressed to each of such stockholders, when the place of residence is known, and deposit in the post office, and published at least for six successive weeks, in one newspaper in one of the cities or towns in which each of said corporations has its principal office of business, and has been sanctioned by such stockholders, by the vote of at least two-thirds in the amount of the stock represented at such meeting, voting by ballot in regard to such agreement, either in person or by proxy, each share of capital stock being entitled to one vote. And when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders, separately, after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or more corporations.

**SEC. 91. [Agreement filed with secretary of state].**—Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate in counterpart thereof, in the office of the secretary of state, the said two or more corporations (mentioned or referred to in the last two preceding sections, or any other law of this state,) shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect as provided therein.

**SEC. 92. [Title of property].**—Upon the election of the first board of directors of the corporation created by the agreement in the preceding section mentioned, and by the provisions of this subdivision, all and singular the rights and franchises of each and all of said two or more corporations, parties to such agreement, all and singular the rights and interest in and to every species of property, real, personal and mixed, and things in action, shall be deemed to be transferred to, and vested in, such new corporation, without any other deed or transfer. And such new corporation shall hold and enjoy the same, together with the right of way and all other rights of property, in the same manner and to the same extent as if the said two or more corporations, parties to such agreement, should have continued to retain the title and transact the business of such corporations. And the titles and the real estate acquired by either of said two or more corporations, shall not be deemed to revert or be impaired by means of anything in this subdivision contained; *Provided*, That all rights of creditors, and all liens upon the property of either of said corporations, shall be, and hereby are, preserved unimpaired; and the respective corporations shall continue to exist, as far as may



be necessary to enforce the same; *Provided, further*, That all debts, liabilities and duties of either company shall henceforth attach to such new corporation and be enforced to the same extent and in the same manner as if such debts, liabilities and duties had been originally incurred by it.

**SEC. 93. [Duties of the consolidated companies.]**—When any two or more railroad companies shall become consolidated, as contemplated by the provisions of this subdivision, such companies so consolidated shall keep each and every railroad line that may come into its possession by such consolidation, in good running order, with sufficient rolling stock to transfer the freight and passengers. They shall not discriminate against the business of either, or any of such railroad lines, either directly or indirectly, by the detention of freight or passengers, or by charging more for freight, or passengers, than is charged in proportion upon any other railroad line under the control of said company so consolidated; and whenever any railroad company, persons, or person, their grantors, assignors, lessors, or mortgagors, shall have received any lands, bonds, moneys, or other valuable thing, to aid in the construction of any railroad in this state, such railroad company, persons or person, their grantees, assignees, lessees, or mortgagees, shall keep all such roads in good running order, and shall run all trains over the same, and shall cause the same to be listed for taxation as provided in section 17, of chapter sixty-six entitled, "Revenue," and for each and every violation of any condition, requirement or non-compliance with this act, the corporation, persons or person, so violating, or non-complying, shall be fined in any sum not more than five hundred dollars, to be paid to the person or persons so injured, and to be collected by the proper civil action, and shall, in the discretion of the court, forfeit its charter and franchises, and the property of such corporations, companies, persons, or person, so violating, or non-complying, shall be subject to execution without stay thereof, where the same has not been forfeited. [Amended 1875, 69.]

**SEC. 94. [Aiding other railroads—Leasing.]**—Any railroad company heretofore or hereafter incorporated may, at any time, by means of subscription to the capital stock of any other company, or otherwise, aid such company in the construction of its railroad, for the purpose of forming a connection of said last mentioned road with the road owned by the company furnishing such aid; or any railroad company existing in pursuance of law, may lease or purchase any part or all of any railroad constructed by any other company, if said company's lines of said road are continuous or connected as aforesaid, upon such terms and conditions as may be agreed on between said companies respectively; or any two or more railroad companies, whose lines are so connected, may enter into an arrangement for their common benefit consistent with, and calculated to promote the objects for which they are created; *Provided*, That no such aid shall be furnished, nor any purchase, lease or arrangement perfected, until a meeting of the stockholders of each of said companies shall have been called by the directors thereof, at such time and place and in manner as they shall designate, and the holders of at least two-thirds of the stock of such company, represented at such meeting either in person or by proxy, and voting thereat, shall have assented thereto.

**SEC. 95. [Right of way—Damages.]**—Any railroad corporation may purchase and use real estate for a price to be agreed upon with the owners thereof; or the damages to be paid by such corporation for any real estate taken as aforesaid, when not agreed upon, shall be ascertained and determined by commissioners to be appointed by the probate judge of the county wherein such real estate is situated, in conformity with the provisions of this subdivision; *Provided*, That if the company shall need or require, for the purpose of constructing said railroad, to take and occupy any real estate, in any unorganized county, or other unorganized country in this state, where there is no probate judge, then the probate judge of the first organized county, east of said lands upon the line of said road,

SEC. 93. The reference in this section to sec. 17 chap. 66 is to Gen. Stat., 900. That sec. 17 has been substantially re-enacted by laws of 1879, 292, amended 1881. See secs. 39 and 40 of chapter 77, post.

shall appoint commissioners to assess said damages, and to perform all other duties required by the probate judges and commissioners, by the terms of this subdivision, and either shall have the right to appeal, as in other cases provided for by this subdivision.

**SEC. 96. [Property of minors].**—Whenever any railroad corporation shall take any real estate as aforesaid, of any minor, insane person, or any married woman whose husband is under guardianship, the guardian of such minor or insane person, or such married woman with the guardian of such husband may agree and settle with said corporation for all damages, or claims by reason of the taking of such real estate, and may give valid releases and discharges therefor.

**SEC. 97. [Appraisal of damages—Appeal].**—If the owner of any real estate over which said railroad corporation may desire to locate their road, shall refuse to grant the right of way through his or her premises, the probate judge of the county in which said real estate may be situated, as provided in this subdivision, shall, upon the application of either party, direct the sheriff of said county to summon six disinterested freeholders of said county, to be selected by said probate judge, and not interested in a like question, unless a smaller number is agreed upon by the parties, whose duty it shall be to inspect said real estate and assess the damages which said owner will sustain by the appropriation of his land to the use of said railroad corporation, and make report in writing to the probate judge of said county, who, after certifying the same under his seal of office, shall transmit the same to the county clerk of said county for record, and the said county clerk shall file, record and index the same in the same manner as is provided for the record of deeds in this state. And such record shall have the like force and effect as the record of deeds in pursuance of the statute in such case made and provided. And if said corporation shall, at any time before they enter upon said real estate for the purpose of constructing said road, pay to said probate judge for the use of said owner, the sum so assessed and returned to him as aforesaid, they shall thereby be authorized to construct and maintain their railroad over and across said premises; *Provided*, That either party may have the right to appeal from such assessment of damages to the district court of the county in which such lands are situated, within sixty days after such assessment. And in case of such appeal, the decision and finding of the district court shall be transmitted by the clerk thereof, duly certified, to the county clerk, to be filed and recorded, as hereinbefore provided, in his office. But such appeal shall not delay the prosecution of the work on said railroad, if such corporation shall first pay or deposit with said probate judge the amount so assessed by said freeholders; and in no case shall said corporation be liable for the costs on such appeal, unless the owner of such real estate shall be adjudged entitled, upon the appeal, to a greater amount of damages than was awarded by said freeholders. The company shall, in all cases, pay the costs of the first assessment; *Provided*, That either party may appeal from the decision of the district court to the supreme court of the state, and the money so deposited, shall remain in the hands of the probate judge until a final decision be had, subject to the order of the supreme court.

**SEC. 98. [Commissioners shall assess damages to all real property].**—Freeholders so appointed shall be the commissioners to assess all damages to the owners of real estate in said county; and said corporation may, at any time after their appointment, upon the refusal of any owner or guardian of any owner of lands in said county to grant the right of way as aforesaid, by giving the said owner or guardian ten days notice thereof in writing, either by personal service or by leaving a copy thereof at his usual place of residence, have the damages assessed in the manner hereinbefore prescribed.

**SEC. 97.** If the damages have not been deposited an action may be brought against the road for the amount of the award, to enjoin its operation across plaintiff's premises, or in trespass for the unauthorized entry thereon. 4 Neb. 24. And this may be done even where the company have appealed from the award. Id. 439. An award containing a provision allowing the owner of the premises to "move back his house" therefrom, held valid. Id. 24. —In taking an appeal under this section, no appeal bond is required, nor is it necessary to file pleadings in the district court. 6 Neb. 160.

**SEC. 99. [Completion of panel—Fees.]**—In case of the death, absence or refusal or neglect of any of said freeholders to act as commissioners as aforesaid, the sheriff shall, upon the selection of said probate judge, summon other freeholders to complete the panel, and said commissioners shall proceed as directed in the preceding section. Said commissioners shall receive two dollars per day, each, for their services, and the same shall be taxed in the bill of costs.

**SEC. 100. [Non-residents' lands.]**—If, upon the location of said railroad it shall be found to run through the lands of any non-resident owner, the said corporation may give four weeks notice to such proprietor, if known, and if not known, by a description of such real estate, by publication four consecutive weeks in some newspaper published in the county where such lands may lie, if there be any, and if not, in one nearest thereto on the line of their said road, that said railroad has been located through his or her lands; and if such owner shall not, within thirty days thereafter, apply to said probate judge to have the damages assessed in the mode prescribed in the preceding sections, said company may proceed, as herein set forth, to have the damages assessed, subject to the same right of appeal as in case of resident owners; and upon the payment of the damages assessed, to the probate judge of the proper county for such owner, the corporation shall acquire all rights and privileges mentioned in this subdivision.

**SEC. 101. [Crossings.]**—Any railroad corporation may raise or lower any turnpike, plank road, or other way, for the purpose of having their railroad pass over or under the same; and in such cases said corporation shall put such turnpike, plank road, or other way, as soon as may be, in good repair.

**SEC. 102. [Same.]**—Every railroad corporation, while employed in raising or lowering any turnpike or other way, or in making any other alterations, by means of which the said way may be obstructed, shall provide, and keep in good order, suitable temporary ways to enable travelers to avoid or pass such obstructions.

**SEC. 103. [Bridges.]**—Every railroad corporation shall maintain and keep in good repair all bridges, with their abutments, which such corporation shall construct, for the purpose of enabling their road to pass over or under any turnpike, road, canal, water-course or other way.

**SEC. 104. [Bell and whistle.]**—A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the said railroad shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to this state, and also be liable for all damages which shall be sustained by any person by reason of such neglect.

**SEC. 105. [State lands.]**—Any railroad corporation shall be authorized to pass over, occupy and enjoy, any of the school, university, saline or other lands of this state; *Provided*, That no more than one hundred feet in width from the center of the roadway survey of such corporation, on either side, shall be taken for roadway, and not to exceed twenty acres to conform to the subdivisions of the government survey, in any one tract for each section of twelve consecutive miles of such railroad, shall be taken for station, depot grounds, machine shops, turn-outs, side-tracks, warehouses, and other appurtenances to a railroad; and that any railroad corporation that has surveyed or shall hereafter survey or locate a line of its road, immediately upon platting such survey of its line, and of the selection for depot grounds under this act, and filing such plat duly certified by the chief engineer or president of such corporation, of the fact of such survey and selection for depot grounds, duly acknowledged, with the secretary of state, and with the county clerk of the county in which such land is situated, to operate as a vested right in such corporation for two years from the date of filing the same, shall be authorized to enter upon said lands so surveyed and selected, and construct thereon all necessary railroad depot buildings, machine shops, turn-outs, side-tracks, turn-tables, round-houses and other appurtenances deemed necessary for railroad

purposes by such corporation, and so soon as such railroad shall be constructed over such lands, so selected, and a station erected thereon, on proof of such fact, to the satisfaction of the governor, and upon paying the full value for said lands for depot station and work shop grounds, and all grounds herein contemplated, except the one hundred feet of track-way, the governor shall convey in fee-simple by letters patent under the great seal of the state, attested by the secretary of state, to the corporation constructing such railroad, the lands and right of way included in the plat and certificate so filed with the secretary of state as aforesaid, and no subsequent grant from the state to any other person or corporation of any tract of land including such right of way and selection for depot grounds so platted, and the plat thereof filed as aforesaid, though not excepted in such grant, shall divest said railroad corporation of their rights in the same under this act; *Provided, further*, That the damages accruing to any occupant or owner, or other person who may reside or have improvements on said land previous to the filing of such plat, shall be determined and paid by said railroad company as heretofore provided in this subdivision. [Amended 1869, 84.]

SEC. 106. [**Crossings where persons own land on both sides.**].—When any person owns land on both sides of any railroad, the corporation owning such railroad shall, when required so to do, make and keep in good repair one causeway or other adequate means of crossing the same.

SEC. 107. [**Passengers refusing to pay fare.**].—If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any place within five miles of any station.

SEC. 108. [**Intoxication of employees.**].—If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not less than six months nor more than one year, and be imprisoned until the fine is paid.

SEC. 109. [**Repealed by G. S. 849.**]

SEC. 110. [**Company not liable to damages.**].—In case any passenger on any railroad shall be injured while on the platform of a car while in motion, or in any baggage, wood or freight car, in violation of the printed regulations of the company posted up at the time in a conspicuous place inside of its passenger cars then in the train, such company shall not be liable for the injury, provided said company furnished room inside its passenger cars sufficient for the accommodation of its passengers.

SEC. 111. [**Liability as common carriers.**].—Any railroad company receiving freight for transportation, shall be entitled to the same rights and be subject to the same liabilities as common carriers. And whenever two or more railroads are connected together, the company owning either of said roads receiving freight to be transported to any place on the line of either of the roads so connected, shall be liable as common carriers for the delivery of such freight to the consignee of said freight, in the same order in which such freight was shipped.

SEC. 112. [**Liability of stockholders.**].—Every stockholder of any railroad company shall be individually liable to the creditors of such company, to an amount equal to the amount unpaid on the stock held by him for all the debts and liabilities of such company until the whole of the capital stock held by him

SEC. 111. The company cannot divest itself of its character as a common carrier by special agreement. 5 Neb. 122. And when it undertakes to carry property its relation as a common carrier is established, with the duties and obligations that grow out of it. *Id.*

SEC. 112. Where the amount due from each stockholder on account of subscriptions to capital stock equals or exceeds the demand of a creditor of the corporation, a joint judgment therefor may be rendered against all of the stockholders, who in such case are treated as partners. 4 Neb. 559. But the liability of stockholders is not alone limited by this section. All the provisions of the next subdivision apply to railroads and a non-compliance therewith, renders stockholders in railroad corporations individually liable for corporate debts. 4 Neb. 560.

shall have been paid to the company; but in no other case shall the stockholders be individually liable for the debts of the corporation.

**SEC. 113. [Crossing other railroads.]**—Every railroad company shall have power to cross, intersect, join and unite its railroad with any other railroad before constructed, at any point on its route and upon the grounds of such other railroad company, with the necessary turn-outs, sidings and switches, and other conveniences in furtherance of the objects of its connection. And every company whose railroad is or shall hereafter be intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners, to be selected as provided in this subdivision.

**SEC. 114. [Roads in adjoining states.]**—Every railroad company organized under the laws of this state shall have power to intersect, join and unite its railroad or railroads with any railroad or railroads constructed or to be constructed in this state or in any adjoining state or territory, by any railroad company organized under the laws of any state or territory, at such point on the boundary line of this state and such adjoining state or territory or at such other point as may be mutually agreed upon between said companies, and all such railroad companies whose railroads are or may be connected at the boundary line of this state or at such other agreed point by bridge, transfer, ferry or otherwise as to form practically a continuous line of railway over which cars may pass, are authorized to consolidate the stock of the respective companies, making one joint stock company thereof, and bringing the railroads thus connected under one management upon such terms as may be mutually agreed; *Provided*, No railroad company shall consolidate its stock, property, franchises or earnings in whole or in part with any other railroad corporation owning or operating a parallel or competing line in this state. Articles stating the terms of such consolidation shall be approved by each company by a vote of the stockholders owning a majority of the stock in person or by proxy at either a regular annual meeting thereof, or at a special meeting called for that purpose by a notice of at least sixty days, stating the object of such meeting, to be addressed to each of such stockholders when their place of residence is known, and deposited in the postoffice and published for at least three successive weeks in one newspaper in at least one of the cities or towns in which each of said corporations has its principal business office, or by the consent in writing of such majority annexed to such articles and copies of said articles and of the records of such approval or of such consent, and accompanied by lists of the stockholders of such corporation, and the number of shares held by each, duly certified by the respective presidents and secretaries with the respective corporate seals affixed, shall be filed for record in the office of the secretary of state of this state before any such consolidation shall have any validity or effect. Upon filing for record in the office of the secretary of state of the copies of said articles of such consolidation, and of such record of approval or consent the companies so consolidating shall become one corporation, and the said consolidating corporations shall become merged in the new corporation provided for in said articles, and shall be known thereafter by the corporate name therein adopted, and shall within this state possess all the powers, franchises and immunities, including the right of further consolidation with other corporations under this section, and be subject to the same liabilities and restrictions imposed by the laws of this state upon other railroad companies, and shall in addition possess such powers, franchises and immunities, and be liable to such special restrictions and liabilities, as the said consolidated corporations were within this state possessed of or subject to under any laws of this state peculiarly applicable to them or either of them at the time of such consolidation. [Amended March 1. Took effect June 1, 1881.]

**SEC. 115. [Extension into other states.]**—Every railroad company

heretofore organized, or which may be hereafter organized under this subdivision, or which may accept the same as is hereinbefore provided, is hereby empowered to extend their road into or through any other state or territory, under such regulations as may be prescribed by the laws of such state or territory through which said road may be extended; and the rights and privileges over said extension, in the construction and use of said railroad for the benefit of said company, and controlling and applying the assets of said company, shall be the same as if their railroads had been constructed wholly within this state.

**SEC. 116. [Contracts with roads in other states.]**—Every railroad company heretofore organized, or which may be hereafter organized under this subdivision, or which may accept the same as is hereinbefore provided, and which may have constructed or commenced the construction of their road so as to meet and connect with any other railroad in an adjoining state or territory, at the boundary line of this state, shall have the power to make such contracts and agreements with any such roads constructed in an adjoining state or territory for the transportation of freight and passengers, or for the use of its said road, as to the board of directors may seem proper.

**SEC. 117. [Mortgages, etc.]**—Every railroad company shall have power and is hereby authorized to mortgage or execute deeds of trust of the whole or any part of their property and franchises, including any lands or other property granted to said company by the United States, to secure money borrowed by them for the construction and equipment of their roads, and may issue their corporate bonds in sums not less than five hundred dollars—secured by said mortgages or deeds of trust—payable to bearer or otherwise, and, if payable to bearer, negotiable by delivery, bearing interest at a rate not to exceed ten per cent. per annum, and convertible into stock, or not, as shall be plainly expressed on the face of each and every bond so issued by said company, and may sell them at such rates or prices as they may deem proper; and if said bonds should be sold below their nominal or par value, they shall be valid and binding upon the company, and no plea of usury shall be put in or allowed by said company upon any suit or proceedings upon the same. The principal and interest on said bonds, or either of them, may be made payable within or without this state.

**SEC. 118. [Lien of mortgage.]**—Any mortgage or deed of trust made upon the lands, roads or other property of any railroad company, shall bind and be a valid lien upon all the property mentioned in such deed or mortgage including rolling stock; and the purchaser under foreclosure of mortgage or trust deed shall have and enjoy all the rights of a purchaser on execution sale; *Provided*, That nothing contained in this subdivision shall be so construed as in any manner to interfere with, change or modify the rights of this state, or of the United States, to any lands granted by congress to this state or to said companies, or to transfer any right in said lands, otherwise than as subject to all the conditions imposed by the grant made by the United States.

**SEC. 119. [Same.]**—Said mortgages or deeds of trust may by their terms include and cover not only the property of the companies making them at the time of their date, but property both real and personal which may thereafter be acquired by them, together with all the material and property necessary for the use and operation of said road, and shall be as valid and effectual as if the property were in possession at the time of the execution thereof.

**SEC. 120. [Record.]**—Said mortgages or deeds of trust shall be recorded in the office of the county clerk of each organized county through which said road mortgaged or deeded may run in this state or wherever it may hold lands included in said mortgages or deeds of trust, and shall be notice to all the world of the rights of all parties under the same; and for this purpose, and to secure the rights of mortgagees or parties interested under deeds of trust so executed and recorded, the rolling stock, personal property, and material necessary for operating the road of said company, belonging to said road, and appertaining thereto, shall be deemed a part of the road, and said mortgages and deeds so recorded, shall have

the same effect, both as to notice and otherwise, as to the real estate covered by them.

**SEC. 121. [Regular trains.]**—Every such railroad corporation shall start and run their cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of passengers and freight, and shall take, transport, and discharge all passengers to and from such stations as the trains stop at, from or to all places and stations upon their said road, on the due payment of fare or freight bill.

**SEC. 122. [Damages.]**—In case of the refusal, by such corporation or their agents, to take and transport any passenger or property, or to deliver the same or either of them, under the laws, rules and usages that regulate common carriers, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with cost of suit.

## CORPORATIONS.\*

**SEC. 123. [Object.]**—Any number of persons may be associated and incorporated for the transaction of any lawful business, including the construction of canals, railways, bridges, and other works of internal improvement.

**SEC. 124. [Corporate powers.]**—Every corporation as such, has power: *First.* To have succession by its corporate name. *Second.* To sue and be sued, to complain and defend in courts of law and equity. *Third.* To make and use a common seal, and alter the same at pleasure. *Fourth.* To hold personal estate, and all such real estate as may be necessary for the legitimate business of the corporation. *Fifth.* To render the interest of the stockholders transferable. *Sixth.* To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation therefor. *Seventh.* To make by-laws, not inconsistent with any existing law, for the management of its affairs.

**SEC. 125. [Powers vest in every corporation.]**—The powers enumerated in the preceding section, shall vest in every corporation in this state, whether the same be formed without, or by legislative enactment, although they may not be specified in its charter, or as articles of association.

**SEC. 126. [Articles of incorporation.]**—Every corporation, previous to the commencement of any business, except its own organization, when the same is not formed by legislative enactment, must adopt articles of incorporation, and have them recorded in the office of the county clerk of the county or counties in which the business is to be transacted, in a book kept for that purpose.

**SEC. 127. [Copy filed with secretary of state.]**—Corporations for the construction of works of internal improvement, must also file in the office of the secretary of state, a copy of their articles of association, and the same shall be recorded in a book kept for that purpose.

**SEC. 128. [Indebtedness.]**—The articles of incorporation must fix the highest amount of indebtedness or liability to which the corporation shall, at any

\*NOTE.—*Charter and franchise.* To establish the existence of a corporation *de facto* a charter or some law under which the assumed powers are claimed to be conferred, and use of the franchise thereby obtained, must be shown. 4 Neb. 420. But though it may be so defective as to render it wholly invalid in a proceeding against it by the state, still the corporate existence, when acting under color of a franchise, cannot be questioned in a collateral proceeding. 7 Neb. 177. *Contracts.* Corporations manifest their assent to make contracts by deed or vote of the company, or by the agreement of their authorized agents, and not by the unauthorized declarations of its individual members. 5 Neb. 320; and see 1 Id. 439. *Government.* A corporation whose governing power is vested in a board of directors, is not bound by acts of its stockholders. 1 Neb. 161. *Liability for acts of agents.* A corporation is liable the same as a natural person for the tortious acts of its servants or agents in the course of their employment, but such acts must be committed in the course of the agent's employment, or connected with the transaction of the business of the corporation. 8 Neb. 223. *Pleading.* A general denial in an answer does not put in issue the corporate existence of a corporation or its right to bring the suit. 8 Neb. 452. *Powers.* A resolution entered of record on the journal of proceedings, authorizing a party to negotiate a loan and execute a mortgage to secure the same is sufficient authority in that behalf. 1 Neb. 473. *Statutory construction.* The provisions of this subdivision apply to railroad companies organized under the preceding subdivision. 4 Neb. 560.

**SEC. 126.** The words "every corporation" include railroads. 4 Neb. 562. The word "organization" means simply the process of forming and arranging into suitable disposition the parts which are to act together in, and in defining the objects of the compound body. Id. 421. The provisions of this section and section 132 do not dispense with a subscription of all the capital stock, when the charter makes such subscription a condition precedent to be performed prior to commencing operations. 5 Neb. 74.

one time, be subject, which must in no case, except in that of risks of insurance companies, and deposits in banks, exceed two-thirds of its capital stock. [Amended 1869, 79.]

SEC. 129. [**Corporate powers cease.**—If any corporation hereafter created by the legislature, shall not organize within one year after its incorporation, its corporate powers shall cease.

SEC. 130. [**Notice.**—Notice must be published in some newspaper near the principal place of business, for four weeks.

SEC. 131. [**Contents.**—Such notice shall contain: *First.* The name of the corporation. *Second.* The principal place of transacting its business. *Third.* The general nature of the business to be transacted. *Fourth.* The amount of capital stock authorized, and the time and conditions on which it is to be paid in. *Fifth.* The time of commencement and termination of the corporation. *Sixth.* The highest amount of indebtedness or liability to which the corporation is at any time to subject itself. *Seventh.* By what officers the affairs of the corporation are to be conducted.

SEC. 132. [**Time of commencing business.**—Any corporation formed without legislative enactment, may commence business as soon as its articles of incorporation are filed by the county clerks of the counties, as required by this subdivision, and shall be valid, if a copy of its articles be filed in the office of the secretary of state, and the notice required be published within four months from the time of filing such articles in the clerk's office.

SEC. 133. [**Change.**—Every change, in any of the above matters shall be recorded, and published in the same manner as the original articles are required by law.

SEC. 134. [**Dissolution.**—No corporation can be dissolved by the members thereof, except by consent of two-thirds of all its members; which consent must be entered on its records, unless a different rule has been adopted in its articles of incorporation.

SEC. 135. [**Posting by-laws.**—A copy of the by-laws of the corporation, and the names of all the officers appended thereto, must be posted in some conspicuous place, at the places of doing business, subject to public inspection.

SEC. 136. [**Notice of indebtedness.**—Every corporation hereafter created, shall give notice annually, in some newspaper printed in the county or counties in which the business is transacted, and in case there is no newspaper printed therein, then in the nearest paper in the state, of the amount of all the existing debts of the corporation, which notice shall be signed by the president and a majority of the directors; and if any corporation shall fail to do so, all the stockholders of the corporation shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be contracted before such notice is given.

SEC. 137. [**Conveyances.**—It shall be lawful for any corporation to convey lands by deed, sealed by the common seal of said corporation, and signed by the president or presiding officer of the board of directors of the corporation; and such deed, when acknowledged by such officer to be an act of the corporation, or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the clerk's office of the county in which the lands lie, in like manner as other deeds.

SEC. 138. [**Arrears of dues.**—All corporations may sue for, and recover from their respective members in any court of competent jurisdiction, all arrears

SEC. 132. The filing of the articles with the clerk is a condition precedent to the exercise of any corporate franchise. 4 Neb. 422. The law and the articles so filed taken together constitute the charter of the company. Id. 5 Neb. 74. See note to sec. 128.

SEC. 136. This section applies to railroad corporations. 4 Neb. 560. The liability created by this section only applies to debts contracted during the time the officers are in default in publishing the notice required. 8 Neb. 118. The officers may be compelled by mandamus to make and publish the statement. Id. 119. See also 10 Neb. 600.

SEC. 138. Where the subscription contract or charter specifically fixes the capital stock at a certain amount, the capital so fixed must be fully subscribed, before an action will lie against a subscriber to recover



or other debts due, or other demands which now are or hereafter may be owing to them, in like manner as they might sue for and recover the same from any indifferent person who might be a member, any law, usage, or custom to the contrary notwithstanding.

**SEC. 139. [Liability of stockholders.]**—If any corporation fail to comply, substantially, with the provisions of this subdivision, in relation to giving notice, and other requisitions of organization, the property of all the stockholders shall be liable for the corporate debts.

**SEC. 140. [Deception as to means—Penalties.]**—If any deception be practiced by any corporation upon the public or individuals, in relation to its means or liabilities, all those engaged in such deception shall be liable to a fine not exceeding five hundred dollars; and any person injured by such deception, may recover double the amount of damages he may have sustained by reason of the same, in any court having jurisdiction of the amount claimed.

**SEC. 141. [Insolvent corporation.]**—A division of the funds of a corporation, for other purposes than those mentioned in the act granting the charter and the payment of dividends, which have insufficient funds to meet the liabilities of the corporation, shall be deemed a violation of the provisions of this subdivision, and subject those engaged therein to the penalties herein prescribed.

**SEC. 142. [Forfeiture.]**—Any violation of the provisions of this subdivision shall cause a forfeiture of all the privileges conferred by the same, and the court may proceed to close the affairs of the corporation, by an information for that purpose.

**SEC. 143. [Closing business.]**—Corporations whose charters expire by their own limitation, or by the voluntary acts of the stockholders, may continue to act for the purpose of closing their business, but for no other purpose.

**SEC. 144. [Want of legal organization, no defense.]**—No body of men acting as a corporation under the provisions of this subdivision, shall be permitted to set up the want of legal organization as a defense to any action brought against them, as a corporation; nor shall any person sued on a contract made with such corporation, or for an injury to the property of such corporation, be permitted to set up the want of legal organization in defense of such action.

#### HOMESTEAD ASSOCIATIONS.

**SEC. 145. [How formed.]**—Any number of persons not less than five may associate themselves together and become a corporation as provided in chapter twenty-five of the revised statutes, commencing at section 128 of said chapter, under the title of "Corporations" for the purpose of raising moneys to be loaned among the members of such corporation, for use in buying lots or houses, or in building or repairing or removing incumbrances from houses; and such corporation shall be authorized and empowered to levy, assess, and collect from its members such sums of money, by rates of stated dues, fines, interest on loans advanced, and premiums bid by members for the right of precedence in taking loans, as the corporation, by its by-laws, shall adopt; also, to acquire, hold, encumber, and convey all such real estate and personal property as may be legitimately pledged to it on such loans, or may otherwise be transferred to it in the due course of its business; *Provided*, That the dues, fines, and premiums so paid by members of such corporation, although in excess of twelve per cent. per annum, on loans taken by them, shall not be construed to make the loans so taken usurious; *And provided, also*, That no person shall hold more than ten shares in any such association, in his own right, each share not to exceed two hundred dollars. [G. S. § 1, 207.]

**SEC. 146. [Liability of stockholders.]**—All stockholders of any such assessments levied on his shares, unless there is a clear provision to proceed with a less subscription, or a waiver of the condition precedent. 5 Feb. 74. See also Const., art. XI, "Miscellaneous Corporations," sec. 4, ante p. 34.

**SEC. 139.** See note to sec. 112.

**SECS. 145-148.** "An act to enable associations of persons for raising funds to be loaned among their members for building them homesteads and other purposes, to become bodies corporate." G. S. 207. Took effect Feb. 18, 1873.

**SEC. 146.** Such associations have no authority to charge and receive interest on loans made, to exceed the maximum rate allowed by law, and all loan contracts made in excess of such rate are usurious. 7 Feb. 177, 181.

sociation shall be deemed and held liable to any amount equal to their stock subscribed, or by them at any time held in addition to said stock, for the purpose of securing the creditors of said association. [Id. § 2.]

SEC. 147. [**Loans heretofore made.**].—All contracts and loans made by any corporation or association already formed and now in existence in this state, under and by virtue of said chapter twenty-five of the revised statutes, to and with any member of said corporation or association, and not inconsistent with the laws of this state, nor anything in this act contained, are hereby declared to be legal and binding contracts between said corporation or association and the members thereof so contracting; and the securities given by said members upon said contract or loan, to said corporation or association for the security of any loan, fine, or forfeiture, according to the terms and conditions of said security or contract therein referred to, and not inconsistent with any law of this state or in this act contained, is hereby declared to be a legal, valid, and binding security, and contract in law in the hands of said corporation or association and with the party making the same, notwithstanding a greater rate of interest than twelve per cent. per annum may have been contracted for or reserved in said contract. [Id. § 3.]

SEC. 148. [**Usury.**].—That in all corporations or associations now formed and in existence in this state, and doing business in this state, which said corporation or association have made loans to any of its members and taken securities therefor in pursuance of their constitution and by-laws, that any payment made after the passage of this act, by any member of said corporation or association, of any dues, forfeitures, or fines which may be due to said corporation or association according to the terms of the contract between said corporation or association and said member to said corporation or association, shall be deemed in law a waiver of anything in said contract or loan that might be deemed usurious in the same under the laws of this state at the time the same was made and securities given, and a ratification of said loan or contract, and of its present and future legality between said parties, as now existing under and by virtue of this act. [Id. § 4.]

#### CHARITABLE SOCIETIES.

SEC. 149. [**How formed.**].—That three or more persons who may desire to become incorporated for any charitable purpose, may execute, under their hands, and acknowledge before some person within the state, authorized to take the acknowledgment of deeds, one or more duplicate articles of agreement as hereinafter specified, one copy whereof shall be filed and recorded in the office of the secretary of state. And a record shall be made of such articles, or of a certified copy thereof in the clerk's office of the county or counties in this state, in which the office of such association for the transaction of business may be located; and upon the execution and acknowledgment of such articles, the signers thereof, and those who may hereafter become associated with them, shall become a body politic and corporate, for the purposes set forth in said articles. Charitable societies within the meaning of this act, shall be construed to include only societies intended to assist those suffering from any disease, infirmity or necessity; *Provided, however*, That no person shall, by reason of membership in any such society, become entitled thereby to any special dividend or benefit out of the funds thereof, depending on such membership. [G. S. § 1, 209.]

SEC. 150. [**Articles of association.**].—The articles of association shall contain: *First*. The names of the persons associating in the first instance, and their places of residence. *Second*. The name of such corporation and the place where its office for the transaction of business is located, and the period for which it is incorporated, not exceeding thirty years. *Third*. The object for which it was organized, which shall be stated with convenient certainty and expressly. *Fourth*. The number of its trustees and regular officers, and the time and place of holding its annual meeting. *Fifth*. The terms and conditions of membership. [Id. § 2.]

SEC. 147. The act has no retroactive operation. 7 Feb. 180.

SECS. 149-154. "An act for the incorporation of Charitable Societies." G. S. 209. Took effect Feb. 25, 1873.

**SEC. 151. [Trustees.]**—The affairs of such corporations shall be managed by not less than five, nor more than twenty trustees, to be chosen by the members thereof, and to hold office for one year and until their successors be chosen. And the regular officers thereof, except the treasurer and secretary, shall be chosen from such trustees. The officers may be chosen by the trustees or by the members of such corporation, as the articles shall prescribe. The by-laws of such corporation shall be adopted by the trustees, who may change them at their pleasure. All such trustees shall be citizens of the United States, and residents of the state of Nebraska. A majority of the trustees shall be a quorum to transact business. [Id. § 3.]

**SEC. 152. [Real estate.]**—No such corporation shall have power to take or hold any real estate, except such as may be necessary for any hospital or asylum under its control, or for the transaction of its business, for a longer period than ten years. [Id. § 4.]

**SEC. 153. [Funds how invested.]**—All the funds received by any such corporation shall be used in the first instance, or shall be invested, and the income thereof used (after paying the necessary expenses,) for the exclusive purpose set forth in the articles of association, and no portion thereof shall be used for any such purpose, except within this state, and no portion of the funds of any such corporation shall be used or contributed towards the erection, completion or furnishing of any building not owned or used by such corporation. Such corporation may take by gift, purchase, or devise, property to an amount not exceeding one hundred thousand dollars, and it shall be lawful to invest the same upon mortgage, or in, or by loan on railroad stocks or bonds, or any city, county, state or government securities; but no loan shall be made to any trustee or officer of such corporation; *Provided*, That any such corporation may, in its articles of agreement, specify the kind of securities in which its funds shall be invested, and that no part of its funds shall be invested in any other securities than those named in its articles, or where the securities shall not be specified in the articles of agreement, then such funds shall only be invested in such securities as are specified in this act. [Id. § 5.]

**SEC. 154. [Report of affairs.]**—Any corporation formed under this act shall, whenever required by the attorney general, or by the legislature, report a full statement of its affairs under the oath of at least two of its trustees, and for any neglect to furnish such report when required, all of the trustees so neglecting shall be liable to a penalty of fifty dollars each, to be recovered by action of debt in the name of the people of Nebraska. [Id. § 6.]

#### ASSOCIATIONS OF PROFESSIONS.

**SEC. 155. [How incorporated.]**—All associations of members of the professions of law, medicine or divinity now existing, or which may hereafter be formed, may become incorporated and have all the powers, rights, duties and liabilities of corporations for the attainment of their respective objects, by filing in the office of the secretary of state a copy of their constitution and by-laws duly attested by their president or presiding officer and countersigned by their secretary. [1877 § 1, 119.]

**SEC. 156. [Executive council.]**—All such associations shall upon their organization elect an executive council of not less than three nor more than six persons, who, together with the president and secretary of such association, shall constitute the trustees or directors, and perform the duties and have the powers defined in sections forty-two and forty-four of chapter eleven entitled "Corporations." [Id. § 2.]

**SEC. 157. [Seal.]**—Such associations may have and use a seal with such devices as may be proper, and change the same at pleasure. [Id. § 3.]

#### CANALS.

**SEC. 158. [Right of way, how acquired.]**—Any corporation organized

SECS. 155-157. "An act to enable associations of the learned professions to become bodies corporate." Laws 1877, 119. Took effect June 1, 1877.

under the laws of this state for the purpose of constructing and operating canals for irrigating, or water-power purposes, or both, may acquire right of way over or upon any lands for the necessary construction of such canal, including dams, reservoirs, and all necessary adjuncts to said canal, in the same manner as railroad corporations may now acquire right of way for the construction of railroads, and the provisions of law applicable to acquiring right of way by railroad corporations are hereby declared to be applicable to corporations for the construction of canals for irrigation or water-power purposes, or both. [1877 § 1, 168.]

SEC. 159. [**Works of internal improvement.**].—Canals constructed for irrigating or water-power purposes, or both, are hereby declared to be works of internal improvement, and all laws applicable to works of internal improvement are hereby declared to be applicable to such canals. [Id. § 2.]

#### UNIVERSITIES.

SEC. 160. [**How incorporated.**].—Whenever any person or persons shall have become possessed of funds, securities and property of the value of one hundred thousand dollars or more, for the purpose of an institution of learning of the rank and grade of a college or university, it shall be competent for him or them to present to the judge of the district court of the county in which such institution is, or is proposed to be situated, a petition setting forth the fact, and such circumstances as may be pertinent, praying the appointment of one or more commissioners to examine into the truth thereof; and thereupon it shall be the duty of the said judge to appoint a commissioner or commissioners for the purpose aforesaid. The person or persons so appointed shall be, by said judge, sworn to full inquiry and true report make of the matters given to him or them in charge, and the said oath, duly subscribed by the parties and certified by the said judge, shall be filed in the office of the clerk of said county. The said commissioner or commissioners shall thereupon personally examine the property, funds and securities alleged to be set apart for the purpose aforesaid, and shall appraise the same and report the facts thus ascertained to the said judge. If, from the said report, it shall appear to the said judge that the sum of one hundred thousand dollars in property, funds, and securities of that value have been set apart for the purpose aforesaid, so as to be irrevocably and inviolably appropriate thereto, the said judge shall indorse the said report with an order approving the same, and directing that the same be filed in the office of the said county clerk, together with the petition aforesaid, and other papers presented to him in the same matter, which petition, report, order, and papers, shall be recorded by the said clerk in the book of incorporations to be kept in his office. [1879 § 1, 189.]

SEC. 161. [**Trustees.**].—Whereupon, the person or persons possessed of the said funds, securities, and properties, may, under his or their hands, appoint five or more persons to be trustees of the said institution who shall thereupon become a body politic and corporate under a name and style to be named, designated, and appointed for the purpose by the aforesaid person or persons in the said writing appointing the said trustees, which paper writing of appointment shall be filed and recorded in the book of incorporations in the office of the said county clerk, and the said trustees, under the name and style so named, designated, and appointed, may sue and be sued, plead and be impleaded in all courts of law and equity; have a common seal, and the same alter, break, and renew at pleasure, and hold all kinds of estate, real and personal, and mixed, which they may acquire by purchase, donation, devise, or otherwise necessary to accomplish the purpose of the corporation, and the same to dispose of and convey at pleasure. And a certified copy of the said paper writing, appointing said trustees, and naming, designating and appointing the name and style of such corporation, shall be

SEC. 158. "An act to enable corporations formed for the construction and operation of canals for irrigation and other purposes, to acquire right of way, and to declare such canals works of internal improvement." Laws 1877, 168. Took effect June 1, 1877.

SEC. 160-2. "An act to provide for the incorporation of universities under certain circumstances," Laws 1879, 189. Took effect June 1, 1879.

*prima facie* evidence in all courts and before all officers, boards, commissioners and tribunals of the due incorporation of such body politic and corporate. [Id. § 2.]

**SEC. 162. [Powers of trustees.]**—The said board of trustees shall have power to fill all vacancies in their number, to make rules, regulations and by-laws for the government of their board and of the institution; to appoint a president, professors, tutors, and teachers, and any other necessary officers and agents, and fix the compensation of each; to erect within, and as departments of said institution, such schools and colleges of the arts and sciences and professions as to them may seem proper, and to confer such academic degrees and honors as are conferred by colleges and universities of the United States. [Id. § 3.]

#### CORPORATIONS FORMED BY SPECIAL ACTS.

**SEC. 163. [Reorganization.]**—The Nebraska university, an incorporation formed under a special act of the legislature of the territory of Nebraska, approved, July 25, 1858, and amended by an act approved, October 25, 1858, and all other incorporations formed under the special acts of the legislature of the territory of Nebraska, previous to the approval of the general incorporation law, may be and are hereby empowered through their trustees, to reorganize under the general incorporation law of this state. [1871 § 1, 106.]

**SEC. 164. [Power of trustees.]**—The trustees of any incorporation reorganized according to section one of this act, shall be, and are hereby empowered to act as successors of such former trustees, and to have and to hold, and to take legal possession of all franchises, rights, privileges and estates, of said special incorporation against all persons whatsoever, and for the interest and purposes of the original incorporation, and for no other purposes whatever. [Id. § 2.]

#### MASONS, ODD FELLOWS AND GOOD TEMPLARS.

**SEC. 165. [Incorporation.]**—That all organizations known as the subordinate lodges of the order of Ancient Free and Accepted Masons, and all organizations known as subordinate lodges of the Independent Order of Odd Fellows, and also, all orders known as Good Templars Lodges, which have been or may hereafter be regularly chartered by the respective grand lodges of the said several orders in the state of Nebraska, be and they are hereby incorporated, and shall be hereafter entitled to all the privileges incident to bodies corporate, so long as they retain their respective organizations and charters aforesaid. [1869 § 1, 64.]

**SEC. 166. [Title and powers.]**—All such subordinate lodges of Masons, Odd Fellows, and Good Templars, shall be known by the name and title designated in their several respective charters, as issued by the said grand lodges, by which name they shall be capable of suing and being sued, pleading and being impleaded in the several courts of this state the same as natural persons, and shall have power to hold and convey real estate and personal property, and do any and all other things usually done by corporations. [Id. § 2.]

### CHAPTER 17.—COUNTIES, COUNTY BOUNDARIES AND COUNTY SEATS.

#### ARTICLE I.—BOUNDARIES.\*

**SECTION 1.** That the counties hereinafter named shall be bounded by boundary lines as set forth in this act. [G. S. § 1, 212.]

**SEC. 2. [Adams.]**—The county of Adams is bounded as follows: Commenc-

SEC. 163-4. "An act to provide for the reorganizing under the general law of incorporations, of all incorporations heretofore formed under special acts." Laws 1871, 106. Took effect Mar. 17, 1871.

SEC. 165-6. "An act incorporating subordinate lodges of Masons, Odd Fellows and Good Templars." Laws 1869, 64. Took effect Feb. 9, 1869.

\*NOTE.—ART. I. "An act defining the boundaries of certain counties." G. S. 212. Took effect Mar. 3, 1873. Secs. 12-13 of "An act to correct clerical errors in and to amend an act entitled 'An act defining the boundaries of certain counties'" [Gen. Stat. 225, 226,] are re-enacted by act of 1879, p. 353, secs. 2 and 3, chap. 18, p. 175. NOTE, also, that at the 10th session of the legislature called to correct errors in the county boundaries act of the 9th session, two acts were passed for the purposes set forth in their titles which were: 1. "An act to extend the time for making assessments in newly organized counties, and in portions of the state affected by changes in county boundaries by an act entitled 'An act defining the boundaries of certain counties.'" Approved March 3, 1873. 2. "An act to make valid and legalize the acts of public officers acting in good faith, and to prevent the failure of justice, or the abatement of actions commenced, owing to any change in county boundaries by an act entitled 'An act defining the boundaries of certain counties,'" approved March 3, 1873." These acts [Gen. Stat. 226, 227] are omitted from this volume.

ing at the southwest corner of township five, north, of range twelve, west; thence east to the southeast corner of township five, north, of range nine, west; thence north to the northeast corner of township eight, north, of range nine, west; thence west to the northwest corner of township eight, north, of range twelve, west; thence south to the place of beginning. [Id. § 2.]

SEC. 3. [**Antelope.**].—The county of Antelope is bounded as follows: Commencing at the southwest corner of township twenty-three, north, of range eight, west; thence east to the southeast corner of township twenty-three, north, of range five, west; thence north to the north east corner of township twenty-eight, north, of range five, west; thence west to the northwest corner of township twenty-eight, north, of range eight, west; thence south to the place of beginning. [Id. § 3.]

SEC. 4. [**Boone.**].—The county of Boone is bounded as follows: Commencing at the southwest corner of township eighteen, north, of range eight, west; thence east along the northern boundary of the Pawnee reservation, to a point where the dividing line between ranges four and five, west, intersect the same; thence north to the northeast corner of township twenty-two, north, of range five, west; thence west to the northwest corner of township twenty-two, north, of range eight, west; thence south to the place of beginning. [Id. § 4.]

SEC. 5. [**Burt.**].—The territory bounded as follows: Commencing at the state boundary at the southeast corner of the Omaha Indian reservation, thence northwardly along said state boundary to the center line of town twenty-five, north; thence due west to the line dividing ranges seven and eight, east; thence south by said line to the south line of township twenty-one, north, of range eight, east; thence east by said line to the northwest corner of section six, in township twenty, north, of range nine, east; thence south by section lines, one mile east of the guide meridian to the southwest corner of section twenty, in township twenty, north, of range nine, east; thence east by section lines to the state boundary; thence northwardly up said boundary to the place of beginning, shall constitute the county of Burt. [Amended 1879, 77.]

SEC. 6. [**Butler.**].—The county of Butler is bounded as follows: Commencing at the southeast corner of township thirteen north, of range four, east; thence north to the south bank of the main channel of Platte river, thence along the south bank of the main channel of the Platte river to the northwest corner of township sixteen, north, of range one, east; thence south to the southwest corner of township thirteen north, of range one, east; thence east to the place of beginning. [1875, 70. Amended 1879, 109.]

SEC. 7. [**Buffalo.**].—The county of Buffalo is bounded as follows: Commencing at a point where the dividing line between ranges twelve and thirteen crosses the southern channel of the Platte river; thence up said channel to a point where the dividing line between ranges eighteen and nineteen intersect the same; thence north along said line to the third standard parallel; thence east along said parallel to the northeast corner of township twelve, north, of range thirteen, west; thence south to the place of beginning. [G. S. § 7, 213.]

SEC. 8. [**Cass.**].—The county of Cass is bounded as follows: Commencing at the southwest corner of township ten, north, of range nine, east; thence east to the middle of the main channel of the Missouri river; thence up said channel until it intersects the Platte river; thence up said Platte river until it intersects the line dividing townships twelve and thirteen, north, the last time; thence west to the northwest corner of township twelve, north, of range ten, east; thence south two miles; thence west six miles; thence south to the place of beginning. [Id. § 8.]

SEC. 9. [**Cedar.**].—The county of Cedar is bounded as follows: Commencing at a point in the middle of the main channel of the Missouri river, at which the line dividing ranges one and two, west, crosses said river; thence south to the southwest corner of township twenty-nine, north, of range one, west; thence east to the southeast corner of township twenty-nine, north, of range one, west; thence south to the southeast corner of township twenty-eight, north, of range one, west; thence east to the southeast corner of township twenty-eight, north, of range

three, east; thence north to the middle of the main channel of the Missouri river; thence up said channel to the place of beginning. [Amended 1875, 73.]

**Sec. 10. [Chase.]**—That the following portion of the state of Nebraska, commencing at a point where the first standard parallel intersects the west boundary line of the state of Nebraska; thence east to the southeast corner of township five, north, of range thirty-six; thence north to the northeast corner of township eight, north, of range thirty-six; thence west to the west boundary line of the state of Nebraska; thence south to the place of beginning, shall hereafter be known as the county of Chase. [G. S. § 5, 225.]

**Sec. 11. [Cheyenne.]**—The county of Cheyenne is bounded as follows: Commencing at a point formed by the intersection of the forty-first degree of north latitude with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude to a point formed by its intersection with the forty-second degree of north latitude; thence east along said forty-second degree of north latitude to a point formed by the intersection with the twenty-fifth degree of longitude west from Washington; thence south to the northeast corner of Colorado territory; thence west to the place of beginning. [G. S. § 10, 214.]

**Sec. 12. [Clay.]**—The county of Clay is bounded as follows: Commencing at the southwest corner of township five, north, of range eight, west; thence east to the southeast corner of township five, north, of range five, west; thence north to the north corner of township eight, north, of range five, west; thence west to the northwest corner of township eight, north, of range eight, west; thence south to the place of beginning. [Id. § 11.]

**Sec. 13. [Colfax.]**—The county of Colfax is bounded as follows: Commencing at a point where the dividing line between ranges one and two, east, intersects the south bank of the Platte river; thence along said south bank to a point where the dividing line between ranges four and five, east, intersects the same; thence north to the northeast corner of township twenty, north, of range four, east; thence west to the northwest corner of township twenty, north, of range two, east; thence south to the place of beginning. [Id. § 12.]

**Sec. 14. [Cuming.]**—The county of Cuming is bounded as follows: Commencing at the southwest corner of township twenty-one, north, of range four, east; thence east to the southeast corner of township twenty-one, north, or [of] range seven, east; thence north to the northeast corner of township twenty-four, north, of range seven, east; thence west to the northwest corner of township twenty-four, north, or [of] range four, east; thence south to the place of beginning. [Id. § 13.]

**Sec. 15. [Custer.]**—That all of that portion of the state of Nebraska commencing at the southeast corner of township thirteen (13), north, of range seventeen (17), west of the sixth principal meridian, thence north to the northeast corner of township twenty, north, of range seventeen (17), west; thence west to the northwest corner of township twenty (20), north, of range twenty-five (25), west; thence south to the southwest corner of township thirteen (13), north, of range twenty-five (25), west; thence east to place of beginning, be and the same shall constitute the county of Custer. [1877 § 1, 211.]

**Sec. 16. [Dakota.]**—The territory bounded as follows: Commencing at the most westerly point where the township line between townships twenty-nine and thirty, north, intersects the state boundary; thence west along said line to the northwest corner of section three in township twenty-nine, north, of range six, east; thence south by section lines to the north line of the Omaha reservation; thence east along said line to the state boundary; thence northwardly by said boundary to the place of beginning, shall be and constitute the county of Dakota. [G. S. § 14, 214.]

**Sec. 17. [Same—Indian reservation.]**—That all that portion of the Winnebago and Omaha reservations not embraced in the counties of Cuming and

**Sec. 17.** "An act to attach a portion of what is known as the Winnebago and Omaha reservations, in the state of Nebraska, to the county of Dakota for election, judicial and revenue purposes." Laws 1879, 1<sup>st</sup>. Took effect Feb. 27, 1879.

Burt, be and the same is hereby attached to the county of Dakota for election, judicial, and revenue purposes. [1879 § 1, 180.]

SEC. 18. [Dawson.]—The county of Dawson is bounded as follows: Commencing at the southwest corner of township nine, north, of range twenty-five, west; thence east to the center of the south channel of the Platte river; thence down said channel to a point where the dividing line between ranges eighteen and nineteen intersects the same; thence north along said dividing line to the northeast corner of township twelve, north, of range nineteen, west; thence west to the northwest corner of township twelve, north, of range twenty-five, west; thence south to the place of beginning. [G. S. § 15, 215.]

SEC. 19. [Dixon.]—The county of Dixon is bounded as follows: Commencing at the southwest corner of township twenty-seven, north, of range four, east; thence east to the line dividing sections thirty-three and thirty-four in township twenty-seven, north, of range six, east; thence north to the dividing line between townships twenty-nine and thirty, north, of range six, east; thence east to the middle of the main channel of the Missouri river; thence up said channel to a point where the dividing line between ranges three and four, intersects the same; thence south to the place of beginning. [Id. § 16.]

SEC. 20. [Dodge.]—The territory bounded as follows: Commencing at the intersection of the line dividing ranges 4 and 5 east with the south bank of Platte river; thence easterly along the south bank of the Platte river to the fourth standard parallel; thence east along said parallel to the southeast corner of section thirty-one (31), township seventeen (17), north, range ten (10), east; thence north on section lines three miles, to the northeast corner of section nineteen (19), township seventeen (17), north, of range ten (10), east; thence west on section lines two miles to southwest corner of section thirteen (13), township 17, range 9, east; thence north on section lines, one mile to northwest corner of section 13, last aforesaid; thence west on section line one mile to southwest corner of section eleven (11), township 17, N. R. 9, east; thence north on section lines one mile to northwest corner of said section eleven (11), last aforesaid; thence west on section lines one mile to the southwest corner of section three, T. 17, R. 9, E.; thence north on section lines one mile to the northwest corner of said section 3; thence west on section line one mile to northwest corner of section 4, township seventeen, range 9, east; thence north on section line one mile to northeast corner of section thirty-two (32), township 18, R. 9, E.; thence west one-half mile on section line to northwest corner of the northeast quarter of section thirty-two, township 18, R. 9, E.; thence north on half section line two miles to the southeast corner of the southwest quarter of section seventeen, township 18, R. 9, E.; thence west on section line one-half mile to southwest corner of section seventeen, township 18, R. 9, E.; thence north on section lines fifteen miles to northeast corner of section six, township 20, R. 9, E.; thence west along the fifth standard parallel to the northwest corner of township twenty, north, of range five, east; thence south by the line dividing ranges four and five, east, to the place of beginning, shall be and constitute the county of Dodge. [G. S. § 17, 215. Amended 1875, 71.]

SEC. 21. [Douglas.]—The county of Douglas is bounded as follows: Commencing at a point in the middle of the main channel of the Missouri river, two miles south of the dividing line between townships fourteen and fifteen, north; thence up said main channel to a point where the fourth standard parallel intersects the same; thence west to a point in the middle of the main channel of the Platte river; thence down said channel to a point two miles due south of the dividing line between townships fourteen and fifteen; thence east to the place of beginning. [G. S. § 18, 215.]

SEC. 22. [Dundy.]—That the following portion of the state of Nebraska, commencing at the southwest corner of said state; thence east to the southeast corner of township one, north, of range thirty-six; thence north to the northeast corner of township four, north, of range thirty-six; thence west to the west boundary line of the state of Nebraska; thence south to the place of beginning, shall hereafter be known as the county of Dundy. [G. S. § 4, 225.]



**SEC. 23. [Franklin].**—The county of Franklin is bounded as follows: Commencing at the southwest corner of township one, north, of range sixteen, west; thence east to the southeast corner of township one, north, of range thirteen, west; thence north to the first standard parallel; thence west to the northwest corner of township four, north, of range sixteen, west; thence south to the place of beginning. [G. S. § 19, 216.]

**SEC. 24. [Fillmore].**—The county of Fillmore is bounded as follows: Commencing at the southwest corner of township five, north, of range four, west; thence east to the southeast corner of township five, north, of range one, west; thence north to the northeast corner of township eight, north, of range one, west; thence west to the northwest corner of township eight, north, of range four, west; thence south to the place of beginning. [Id. § 20.]

**SEC. 25. [Furnas].**—That all that portion of the state of Nebraska, known and described as townships one, two, three and four, north, of ranges twenty-one, twenty-two, twenty-three, twenty-four, and twenty-five, west, shall hereafter be known as the county of Furnas. [G. S. § 1, 224.]

**SEC. 26. [Frontier].**—The county of Frontier is bounded as follows: Commencing at the southwest corner of township five, north, or [of] range thirty, west; thence east to the southeast corner of township five, north, or [of] range twenty-five, west; thence north to the northeast corner of township five, north, of range twenty-five, west; thence east to the southeast corner of township six, north, of range twenty-four, west; thence north to the northeast corner of township eight, north, or [of] range twenty four, west; thence west to the northwest corner of township eight, north, of range thirty, west; thence south to the place of beginning. [G. S. § 21, 216.]

**SEC. 27. [Gage].**—The county of Gage is bounded as follows: Commencing at the southeast corner of township one, north, of range eight, east; thence north to the northeast corner of township six, north, of range eight, east; thence west to the northwest corner of township six, north, of range five, east; thence south along the township line, dividing townships four and five, east to the southern boundary line of the state; and thence east along the state line to the place of beginning. [Id. § 22.]

**SEC. 28. [Gosper].**—*Whereas*, In the constitution of this state in the article on legislative apportionment, and also in the article on "The judicial department," the county of Gosper is recognized as one of the counties of this state, and *Whereas*, Since about the 29th day of August, 1873, there has existed in the district of country bounded on the east by Phelps county, on the south by Furnas county, on the west by Frontier county, and on the north by Dawson county—an organized county in fact, called and known as Gosper county, but of the creation, organization, or naming of which there exists no sufficient record or evidence, therefore, *Be it enacted by the Legislature of the State of Nebraska*: Sec. 1. That all of the acts of the people of said district of country named in the preamble in and about the organization of said county and the establishment of county government therein, and all the official acts of the several county officers of said county, including all who have been officers of said county, or of any precinct, school district or road district therein, since such *de facto* organization, be, and the same are hereby declared to be legal and binding to all and every intent and purpose, the same as though the said county had been established, bounded and named by legislative authority and duly organized by and under proclamation of the governor of the state, and the evidence of such proclamation and such organization duly preserved. [1881 § 1, chap. 36.]

**SEC. 29. [Greeley].**—The county of Greeley is bounded as follows: Commencing at the southwest corner of township seventeen, north, of range twelve, west; thence east to the southeast corner of township seventeen, north, of range nine, west; thence north to the northeast corner of township twenty, north, of

**SEC. 28.** "An act to legalize the organization of the county formerly known as Gosper county and to name the same Garfield county and to define the boundaries thereof." Approved and took effect Mar. 2, 1881.

range nine, west; thence west to the northwest corner of township twenty, north, of range twelve, west; thence south to the place of beginning. [G. S. § 23, 216.]

SEC. 30. [**Harlan.**—The county of Harlan is bounded as follows: Commencing at the southwest corner of township one, north, of range twenty, west; thence east to the southeast corner of township one, north, of range seventeen, west; thence north to the northeast corner of township four, north, of range seventeen, west; thence west to the northwest corner of township four, north, of range twenty, west; thence south to the place of beginning. [G. S. § 24, 217.]

SEC. 31. [**Hall.**—The county of Hall is bounded as follows: Commencing at the southwest corner of township nine, north, or [of] range twelve, west; thence east to the southeast corner of township nine, north, of range nine, west; thence north to the northeast corner of township twelve, north, of range nine, west; thence west to the northwest corner of township twelve, north, of range twelve, west; thence south to the place of beginning. [Id. § 25.]

SEC. 32. [**Hamilton.**—The county of Hamilton is bounded as follows: Commencing at the southwest corner of township nine, north, of range eight, west; thence east to the southeast corner of township nine, north, of range five, west; thence north to the middle of the south channel of the Platte river; thence west along the middle of said south channel, to the line dividing ranges eight and nine, west; thence south to the place of beginning. [Id. § 26.]

SEC. 33. [**Hayes.**—All of that portion of territory bounded as follows, to wit: Commencing at the northeast corner of township eight, range thirty-one, west; thence west to the northwest corner of township eight, range thirty-five; thence south to the southwest corner of township five, range thirty-five; thence east to the southeast corner of township five, range thirty-one; thence north to the place of beginning, be, and the same is hereby declared to be the county of Hayes. [1877 § 1, 212.]

SEC. 34. [**Hitchcock.**—That all that portion of the state of Nebraska, known and described as townships one, two, three and four, north, of ranges thirty-one, thirty-two, thirty-three, thirty-four, and thirty-five, west, shall hereafter be known as the county of Hitchcock. [G. S. § 3, 225.]

SEC. 35. [**Holt.**—The county of Holt is bounded as follows: Commencing at the southwest corner of township twenty-five, north, of range sixteen, west; thence east to the southeast corner of township twenty-five, north, of range nine, west; thence north to the middle of the main channel of the Niobrara river; thence up said channel to a point where the second guide-meridian intersects the same; thence south along said second guide-meridian, to the place of beginning. [G. S. § 27, 217.]

SEC. 36. [**Howard.**—The county of Howard is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range twelve, west; thence east to the southeast corner of township thirteen [north, of] range nine, west; thence north to the northeast corner of township sixteen, north, of range nine, west; thence west to the northwest corner of township sixteen, north, of range thirteen, west; thence south to the place of beginning. [Id. § 28.]

SEC. 37. [**Jefferson.**—The county of Jefferson is bounded as follows: Commencing at the southwest corner of township one, north, of range one, east; thence east to the southeast corner of township one, north, of range four, east; thence north to the northeast corner, thence north to the northeast corner, of township four, north, of range four, east; thence west to the northwest corner of township four, north, of range one, east; thence south to the place of beginning. [Id. § 29.]

SEC. 38. [**Keith.**—That all that portion of the state of Nebraska, lying between the west boundary line of Lincoln county and the east boundary line of Cheyenne county and the boundary line between Nebraska and the territory of Colorado, and between the second and fourth standard parallels, north of the base line, shall hereafter be known as the county of Keith. [G. S. § 6, 225.]

SEC. 39. [**Knox.**—The county of Knox is bounded as follows: Commenc-

SEC. 39. The original act read "L'eau qui Court county," but by a subsequent act passed at the same session the name of the county was changed to Knox. G. S. 224.

ing at the southwest corner of township twenty-nine, north, of range eight, west; thence east to the southeast corner of township twenty-nine, north, of range two, west; thence north to the middle of the main channel of the Missouri river; thence along the middle of the main channel to its intersection with the Niobrara river; thence along the middle of the main channel of the Niobrara river to a point where the dividing line between ranges eight and nine, west, intersects the same; thence south to the place of beginning. [G. S. § 33, 218, 224.]

**Sec. 40. [Johnson].**—The territory bounded as follows: Commencing at the southwest corner of township four, north, of range nine, east; thence east to the southeast corner of section thirty-three in township four, north, of range twelve, east; thence north by section lines to the northeast corner of section four in township six, north, of range twelve, east; thence west to the northwest corner of township six, north, of range nine, east; thence south to the place of beginning, shall be and constitute the county of Johnson. [G. S. § 30, 218.]

**Sec. 41. [Kearney].**—The territory bounded on the north by the middle of the south channel of the Platte river; on the east by the line dividing ranges twelve and thirteen, west; on the south by the first standard parallel; on the west by the line dividing ranges sixteen and seventeen, west, shall be and constitute the county of Kearney. [Id. § 31.]

**Sec. 42. [Lancaster].**—The county of Lancaster is bounded as follows: Commencing at the southwest corner of township seven, north, of range five, east; thence east to the southeast corner of township seven, north, of range eight, east; thence north to the northeast corner of township twelve, north, of range eight, east; thence west to the northwest corner of township twelve, north, of range five, east; thence south to the place of beginning. [Id. § 32.]

**Sec. 43. [Lincoln].**—The county of Lincoln is bounded as follows: Commencing at the southwest corner of township nine, north, of range thirty-four, west; thence east to the southeast corner of township nine, north, of range twenty-six, west; thence north to the fourth standard parallel; thence west to a point where the dividing line between ranges thirty-four and thirty-five intersects the same; thence south to the place of beginning. [Id. § 34.]

**Sec. 44. [Madison].**—The county of Madison is bounded as follows: Commencing at the southeast corner of township twenty-one, north, of range one, west; thence north to the northeast corner of township twenty-four, north, of range one, west; thence west to the northwest corner of township twenty-four, north, of range four, west; thence south to the southwest corner of township twenty-one, north, of range four, west; thence east to the place of beginning. [Id. § 35.]

**Sec. 45. [Merrick].**—The territory bounded as follows: Commencing at the northeast corner of township sixteen, north, of range three, west; thence south by the line dividing ranges two and three, west, to the middle of the south channel of the Platte river; thence westerly by the middle of said south channel to its intersection with the line dividing ranges eight and nine, west; thence north by said line to the northwest corner of townships sixteen, north, of range eight, west; thence east to the west boundary of the Pawnee Indian reservation; thence by the boundaries of said reservation passing by its south side around to the line dividing townships sixteen and seventeen, north; thence east to the place of beginning, shall be and constitute the county of Merrick. [Id. § 36.]

**Sec. 46. [Nance].**—That all of that portion of the state of Nebraska, included in and known as the Pawnee Reservation be and the same shall constitute the county of Nance. [1879 § 1, 148.]

**Sec. 47. [Lands attached to Nance county].**—That all of sections numbered six (6), seven (7), eighteen (18), nineteen (19), thirty (30), and thirty-

**Sec. 48.** In the original act the following proviso was attached: *Provided*, That all territory lying south of the south line of township seventeen, shall be, and hereby is attached to Merrick county; and all territory lying north of the south line of township seventeen shall be and hereby is attached to Platte county, for judicial and revenue purposes, until the officers shall have been elected, and the said county permanently organized according to law.

**Secs. 47-8.** "An act to attach certain unorganized territory to the county of Nance and to make said territory a part of said Nance county, Nebraska." Approved and took effect March 1, 1881.

one (31), in township No. seventeen (17), north, of range No. eight (8), west of the sixth (6th) principal meridian lying west of the old Pawnee Indian Reservation be and the same are hereby attached to and made a part of said Nance county, Nebraska. [1881 § 1, chap. 37.]

**SEC. 48. [Boundaries extended.]**—The boundaries of the said Nance county are hereby extended so as to include all of said unorganized territory. [Id. § 2.]

**SEC. 49. [Attached to sixth judicial district.]**—Until otherwise provided by law, the county of Nance shall be and the same hereby is attached to and made a part of the sixth judicial district for judicial purposes, and the judge of the district court shall appoint a time for the holding of court in said county, as he is now required to do for other counties of said district. [1891 § 1, chap. 38.]

**SEC. 50. [Nemaha.]**—The territory bounded as follows: Commencing at the southwest corner of section thirty-four in township four, north, of range twelve, east; thence north by section lines to the northwest corner of section three in township six, north, of range twelve, east; then east by the line dividing townships six and seven, north, to its first intersection with the state boundary; thence around the old channel of the Missouri river, and including what is known as McKissock's island, by the eastern boundary of the state to the intersection thereof with the line dividing townships three and four, north; thence by said line west to the place of beginning, shall be and constitute the county of Nemaha. [G. S. § 37, 219.]

**SEC. 51. [Nuckolls.]**—The county of Nuckolls is bounded as follows: Commencing at the southwest corner of township one, north, of range eight, west; thence east along the base line to the southeast corner of said township in range five, west; thence north to the northeast corner of township four, north, of range five, west; thence west to the northwest corner of said township in range eight, west; thence south to the place of beginning. [Id. § 38.]

**SEC. 52. [Otoe.]**—The county of Otoe is bounded as follows: Commencing at the southwest corner of township seven, north, of range nine, east; thence east to the middle of the main channel of the Missouri river; thence up said channel until it intersects the dividing line between townships nine and ten; thence west to the northwest corner of township nine, north, of range nine, east; thence south to the place of beginning. [Id. § 39.]

**SEC. 53. [Pawnee.]**—The county of Pawnee is bounded as follows: Commencing at the southwest corner of township one, north, of range nine, east; thence east to the southeast corner of said township in range twelve, east; thence north to the northeast corner of township three, north, of range twelve, east; thence west to the northwest corner of township three, north, of range nine, east; thence south to the place of beginning. [Id. § 40.]

**SEC. 54. [Phelps.]**—That all that portion of territory commencing at the southwest corner of township five, north, of the base line, and range twenty, west of the sixth principal meridian; thence running north to the middle of the south channel of the Platte river; thence running in an easterly direction along the middle of the south channel until it reaches the line dividing the sixteenth and seventeenth ranges west of the said sixth principal meridian; thence south to the southeast corner of township five, north, and seventeen west, as aforesaid; thence west to the place of beginning, be and the same shall constitute the county of Phelps. [G. S. § 1, 223.]

**SEC. 55. [Pierce.]**—The county of Pierce is bounded as follows: Commencing at the southwest corner of township twenty-five, north, of range four, west; thence east to the southeast corner of township twenty-five, north, of range one, west; thence north to the northeast corner of township twenty-eight, north, of range one, west; thence west to the northwest corner of township twenty-eight, north, of range four, west; thence south to the place of beginning. [Amended 1875, 73.]

**SEC. 49.** "An act to attach the county of Nance to and make the same a part of the sixth judicial district." Approved and took effect Feb. 23, 1881.

**SEC. 56. [Polk.]**—The county of Polk is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range four, west; thence east to the southeast corner of township thirteen, north, of range one, west; thence north to the south bank of the north channel of the Platte river; thence west along said south bank to the dividing line between ranges two and three, west; thence to the middle of the south channel of the Platte river; thence west along said channel to a point where the dividing lines between ranges four and five, west, intersects the same; thence south to the place of beginning. [Id. § 42.]

**SEC. 57. [Platte.]**—The county of Platte is bounded as follows: Commencing at a point on the south bank of the Platte river where the dividing line between ranges one and two, east, crosses the same; thence along said south bank to a point where the dividing line between townships sixteen and seventeen intersects the same; thence to the south bank of the main channel of the Platte river; thence west along said south bank to its intersection with the lines dividing ranges two and three west; thence north by said line to the northwest corner of township sixteen, north, of range two west; thence west on the fourth standard parallel to the eastern boundary of the Pawnee Indian reservation; thence west and north by the boundaries of said reservation to the line dividing ranges four and five, west; thence north to the northwest corner of township twenty, north, of range four, west; thence east by the fifth standard parallel to the line dividing ranges one and two, east; thence south to the place of beginning. [Id. § 43.]

**SEC. 58. [Red Willow.]**—That all that portion of the state of Nebraska, known and described as townships one, two, three and four north, of ranges twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty, west, shall hereafter be known as the county of Red Willow. [G. S. § 2, 224.]

**SEC. 59. [Richardson.]**—The county of Richardson is bounded as follows: Commencing at the southwest corner of township one, north, of range thirteen, east; thence east to the middle of the main channel of the Missouri river; thence up said channel until it intersects the line dividing townships three and four, north; thence west to the northwest corner of township three, north [of range thirteen, east]; thence south to the place of beginning. [G. S. § 44, 220.]

**SEC. 60. [Saline.]**—The county of Saline is bounded as follows: Commencing at the southwest corner of township five, north, of range one, east; thence east to the southeast corner of township five, north, of range four, east; thence north to the northeast corner of township eight, north, of range four, east; thence west to the northwest corner of township eight, north, of range one, east; thence south to the place of beginning. [Id. § 45.]

**SEC. 61. [Sarpy.]**—The county of Sarpy is bounded as follows: Commencing at a point in the middle of the main channel of the Missouri river, due east of a point in the middle of the main channel of the Platte river, where the same disembogues into said Missouri river; thence up the middle of the main channel of the said river to a point two miles due south of the north line of township fourteen, north; thence due west to the middle of the main channel of the Platte river; thence down said channel to the place of beginning. [Id. § 46.]

**SEC. 62. [Saunders.]**—The county of Saunders is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range five, east; thence east to the southeast corner of township thirteen, north, of range eight, east; thence south two miles; thence east six miles; thence north two miles; thence east to the main channel of the Platte river; thence up said main channel until it intersects the line dividing ranges four and five, east; thence south to the place of beginning. [Id. § 47.]

**SEC. 63. [Seward.]**—The county of Seward is bounded as follows: Commencing at the southwest corner of township nine, north, of range one, east; thence east to the southeast corner of township nine, north, of range four east; thence north to the northeast corner of township twelve, north, of range four, east; thence [west] to the northwest corner of township twelve, north, of range one, east; thence south to the place of beginning. [Id. § 48.]

**SEC. 64. [Sherman.]**—The county of Sherman is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range sixteen, west; thence east to the southeast corner of township thirteen, north, of range thirteen, west; thence north to the northeast corner of township sixteen, north, of range thirteen, west; thence west to the northwest corner of township sixteen, north, of range sixteen, west; thence south to the place of beginning. [Id. § 49.]

**SEC. 65. [Sioux.]**—All that portion of the territory in the state of Nebraska lying north of Cheyenne county be and the same is hereby declared to be Sioux county. [1877 § 1, 212.]

**SEC. 66. [Stanton.]**—The county of Stanton is bounded as follows: Commencing at the southwest corner of township twenty-one, north, of range one east; thence east to the southeast corner of township twenty-one, north, of range three, east; thence north to the north east corner of township twenty-four, north, of range three, east; thence west to the northwest corner of township twenty-four, north, of range one, east; thence south to the place of beginning. [G. S. § 50, 221.]

**SEC. 67. [Thayer.]**—The county of Thayer is bounded as follows: Commencing at the southwest corner of township one, north, of range four, west; thence east to the southeast corner of township one, north, of range one, west; thence north along the sixth principal meridian to the first standard parallel; thence west to the northwest corner of township four, north, of range four, west; thence south to the place of beginning. [Id. § 51.]

**SEC. 68. [Valley.]**—The county of Valley is bounded as follows: Commencing at the southwest corner of township seventeen, north, of range sixteen, west; thence east to the southeast corner of township seventeen, north, of range thirteen, west; thence north to the northeast corner of township twenty, north, of range thirteen, west; thence west to the northwest corner of township twenty, north, of range sixteen, west; thence south to the place of beginning. [Id. § 52.]

**SEC. 69. [Unorganized territory.]**—That the unorganized territory lying north of Valley county, bounded as follows: Commencing at the southeast corner of township number twenty-one (21), north, in range thirteen (13), west; thence running north to the northeast corner of township number twenty-four (24), north, in range thirteen (13), west; thence running west to the northwest corner of township number twenty-four (24), in range sixteen (16), west; thence running south to the southwest corner of township number twenty-one (21), north, in range sixteen (16), west; thence running east to the place of beginning, be and the same is hereby attached to Valley county for election, judicial, and revenue purposes. [1875 § 1, 162.]

**SEC. 70. [Washington.]**—The county of Washington is bounded as follows: Commencing at the northeast corner of section thirty, in township twenty, north, of range nine, east; thence east on a line parallel with the dividing line between townships nineteen and twenty, and two miles north of the same, to the middle of the main channel of the Missouri river; thence down said channel to a point where the dividing line between ranges sixteen and seventeen intersects the same; thence west to the middle of the main channel of the Elkhorn river; thence up said channel to a point where the dividing line between ranges eight and nine intersects the same; thence east to the southeast corner of section thirty-one in township nineteen, north, of range nine, east; thence north to the place of beginning. [G. S. § 53, 222.]

**SEC. 71. [Wayne.]**—The county of Wayne is bounded as follows: Commencing at the southwest corner of township twenty-five, north, of range one, east; thence east to the southeast corner of section thirty-three, in township twenty-five north, of range six, east; thence north to the northeast corner of section four in township twenty-six, north, of range six, east; thence west to the northeast corner of township twenty-six, north, of range three, east; thence north to the northeast corner of township twenty-seven, north, of range three, east; thence west to the north-

SEC. 69. "An act to attach certain unorganized territory north of Valley county to Valley county for judicial, election and revenue purposes." Laws 1875, 162. Took effect Feb. 4, 1875.

west corner of township twenty-seven, north, of range one, east; thence south to the place of beginning. [G. S. § 54, 222. 1879, 80. Amended March 1. Took effect June 1, 1881.]

SEC. 72. [Webster.]—The county of Webster is bounded as follows: Commencing at the southwest corner of township one, north, of range twelve, west; thence east to the southeast corner of township one, north, of range nine, west; thence north to the northeast corner of township four, north, of range nine, west; thence west to the northwest corner of township four, north, of range twelve, west; thence south to the place of beginning. [G. S. § 55, 222.]

SEC. 73. [Wheeler.]—All that portion of the state commencing at the southeast corner of township twenty-one (21), north of range nine (9), west of the sixth principal meridian; running thence north to the northeast corner of township twenty-four (24), north of range nine (9) west; thence west to the northwest corner of township twenty-four (24) north of range sixteen (16) west; thence south to the southwest corner of township twenty-one (21), north, of range sixteen (16), west; thence east to the place of beginning, be and the same shall hereby constitute the county of Wheeler. [1877 § 2, 211.]

SEC. 74. [York.]—The county of York is bounded as follows: Commencing at the southwest corner of township nine, north, of range four, west; thence east to the southeast corner of township nine, north, of range one, west; thence north to the northeast corner of township twelve, north, of range one, west; thence west to the northwest corner of township twelve, north, of range four, west; thence south to the place of beginning. [G. S. § 56, 223.]

#### ARTICLE II.—ORGANIZATION OF NEW COUNTIES.

SECTION 1. [Appointment of officers.]—When it shall be made to appear by the affidavit of three resident freeholders in any one of the unorganized counties of this state, that such county contains a population of not less than two hundred inhabitants, and ten or more of such inhabitants being taxpayers, may, by memorial, petition the governor to appoint three persons therein mentioned, to act as special county commissioners, and one person by them named to act as a special clerk for such county; and shall also name some place centrally located in the county, for a temporary county seat; whereupon it shall be the duty of the governor to appoint and commission the persons so named for special county officers, and shall, by appointment, under his hand and seal, declare the said place the temporary county seat of such county. [G. S. § 1, 228.]

SEC. 2. [Oath.]—The said commissioners and clerk, before entering upon the discharge of their respective duties, shall take and subscribe an oath, faithfully, promptly and impartially, to perform them as herein required; and such oath shall be filed with, and left in the office of the county clerk. [Id. § 2.]

SEC. 3. [Precincts.]—The said commissioners, or a majority of them, shall proceed to divide such county into suitable and convenient precincts; and such commissioners shall give at least thirty days previous notice of the time which they shall fix upon for holding the first election of precinct and county officers, by conspicuously posting in one of the most public places in each precinct, notices of such election, subscribed by them, and attested by the clerk; the notices posted in each precinct, shall specify the place of voting therein. [Id. § 3.]

SEC. 4. [Election.]—The voters at such election may assemble at nine o'clock A. M., in each precinct, and shall select from among their own number two judges and two clerks for the election, who, before they enter upon the discharge of their duties, shall take the oath required by judges and clerks of election, any one of whom may administer such oath to the other; and the said election shall be governed by the laws regulating elections at the time. The special commissioners shall constitute the board of canvassers for such election, and in the discharge of their duties as such, shall be governed by the law in force at that time.

ART. II. "An act to provide for the organization of new counties and to locate the county seats thereof," except § 8 which was repealed 1875, 182. G. S. 228. Took effect Sept. 1, 1873. Sec. 7, cited 10 Neb. 22.

SEC. 5. [**County seat.**].—At such first election, the voters of the county shall determine the permanent location of the county seat; for this purpose each voter may designate on his ballot the place of his choice for the county seat, and when the votes are canvassed, the place having a majority of all the votes polled shall be the county seat, and public notice of said location shall be given by the county commissioners within thirty days, by posting up notices in three several places in each precinct in the county, and a copy of such notice shall be recorded by the county clerk, in the book of miscellaneous records. [Id. § 5.]

SEC. 6. [**Same.**].—It shall be the duty of the county commissioners of any county, in which the county seat has never yet been located, as provided by law, to submit to the qualified voters of such county, at any general election, the question of the location of the county seat of the county, in manner and form as herein provided, as if no election had ever been held in said county. [Id. § 6.]

SEC. 7. [**Succeeding elections.**].—If no one place has a majority of all the votes polled, as provided in section five, it shall be the duty of the county commissioners within one month after said election, or within one month after the officers elected at the first election have qualified according to law, to order a special election, and give ten days notice thereof, by posting up three notices in each precinct in said county, at which election votes shall be taken by ballot between the three highest places voted for at the first election; and if no choice is made at such election, notice of another election shall be given as above provided for, to decide between the two places having the highest number of votes at the last election; and the place having the highest number of votes shall be the county seat. [Id. § 7.]

SEC. 8. [**County seat on public lands.**].—Whenever any county seat shall be located upon any public lands of the United States, it shall be the duty of the county commissioners to enter or purchase a quarter-section of land at the place so designated, at the expense of and for the use of the county, within three months thereafter, if said land be subject to private entry; if not, the commissioners shall claim the same as a pre-emption under the laws of the United States, for the use of said county. [Id. § 9.]

SEC. 9. [**Survey.**].—Such land shall be surveyed into lots, squares, streets and alleys, and platted and recorded in the county clerk's office; and lots necessary for public buildings shall be reserved by the commissioners for that purpose. [Id. § 10.]

SEC. 10. [**Sale of lots.**].—The remainder of said lots shall be offered at public sale by the sheriff of the county to the highest bidder, at such time as the county board may designate. Notices of such sale shall be posted up in three public places of the county, and published in some newspaper of general circulation therein, at least thirty days previous to such sale. The terms of sale shall be determined by the county commissioners, and they may dispose of lots at private sale upon such terms as they may deem best. [Id. § 11.]

SEC. 11. [**Purchaser.**].—Purchasers of the aforesaid lots shall receive a certificate of purchase from the sheriff, entitling the holder to a deed for the same, when payment in full shall be made according to law. If the purchaser of any lot fails to pay for the same within the time required by the county commissioners, not to exceed one year in any case, the right of the purchaser to such lot shall be forfeited, and the same shall be again sold by the county commissioners as hereinbefore provided. [Id. § 12.]

SEC. 12. [**Proceeds of sale.**].—The proceeds of the sale of such lots, after deducting all necessary expenses, shall be paid into the county treasury and constitute a fund for the erection of public buildings for the use of the county, at the county seat, and shall be used for no other purpose whatever. [Id. § 13.]

SEC. 13. [**Duties of county clerk.**].—Whenever any county organized under the provisions of this chapter shall have been previously attached to any other county for election, judicial and revenue purposes, it shall be the duty of the county clerk chosen at the first election, after having qualified according to law, to procure from the proper officer of such county, a transcript of all deeds, mort-



gages, judgments and liens of every description upon real or personal property lying and being in such newly organized county, and cause the same to be recorded in the proper offices of his own county; such clerk shall be at full liberty to take such transcripts himself, and when recorded in the proper office in his own county, shall stand headed with the name of the county and offices where taken; and a certificate attached thereto that they are correct; and such clerk shall receive for his services ten cents per folio for taking such transcripts, ten cents per folio for recording them, and ten cents per mile for traveling, in going after and returning with them, which shall be audited, allowed and paid to him by his own county. [Id. § 14.]

SEC. 14. [Officers.]—All county and precinct officers elected at the first election as herein provided, shall continue to hold their respective offices until the next general election held for the same offices in other counties, as provided by the election law in force at that time, and until their successors are elected and qualified. [Id. § 15.]

### ARTICLE III.—RE-LOCATION OF COUNTY SEATS.

SECTION 1. [Petition to county board.]—Whenever the inhabitants of any county are desirous of changing their county seat, and upon petitions therefor being presented to the county commissioners, signed by resident electors of said county, equal in number to three-fifths of all the votes cast in said county at the last general election held therein, said petition shall contain in addition to the names of the petitioners, the section, township and range on which, or town or city in which the petitioners reside, their ages and time of residence in the county, it shall be the duty of such board of commissioners to forthwith call a special election in said county for the purpose of submitting to the qualified electors thereof the question of the re-location of the county seat. Notice of the time and the places of holding said election shall be given in the same manner, and said election shall be conducted in all respects the same as is provided by law relating to general elections for county purposes. The electors at said election shall designate on their ballots what city, town or place they desire said county seat located at, or in, and any place receiving three-fifths of all the votes cast, shall become and remain, from and after the first day of the third month next succeeding such election, the county seat of said county. [1875 § 1, 159.]

SEC. 2. [Canvass of votes.]—If it shall appear upon the canvass of said votes that no one place has received three-fifths of all the votes cast, and if it shall further appear that three-fifths of all the votes cast have been cast in favor of places other than the one where said county seat is then located, it shall be the duty of said board of county commissioners to immediately call a special election in the same manner as provided in section one of this act.

ART. III. "An act to provide for the re-location of county seats." Laws 1875, 159. Took effect Feb. 24, 1875.

SEC. 1. The notice should conform to the law authorizing the election. So where under the law then in force [Gen. Stat. sec. 8, 224] the electors were directed "to designate on their ballots the place of their choice for the county seat," a notice authorizing votes only "for removal of county seat: against removal of county seat," was held insufficient. 3 Neb. 252.—Ballots headed "Fairfield Ticket," and describing accurately a subdivision of land within the limits of the town site of Fairfield, should be counted for Fairfield. 5 Neb. 147.—When in the exercise of the jurisdiction given by this section the commissioners receive a petition, judge it to be sufficient and call an election, no one objecting until after the result of the election is declared, it is too late to question the sufficiency of the petition, or to restrain by injunction the removal of offices to the new county seat on the ground of defects therein. 7 Neb. 388.—Parties signing the petition are in attitude of plaintiffs and may withdraw their names before same is acted on by county board. To authorize the calling of the election the petition must contain requisite number of names. 10 Neb. 33.—Although the notice of the election may be less than the statutory time, (then 30 days, now 20 by sec. 12, chapter entitled "Elections," post,) the election will not be declared void at the suit of one taking part therein, for that reason alone, especially where it is not shown that a different result would probably have been obtained if full statutory notice had been given. 7 Neb. 389.—Under this and following sections, upon an application for a mandamus to compel county commissioners to call a second election on the ground that certain illegal votes had been cast at the first election, it was held, that it was not the duty of the commissioners to canvass the vote, but such canvass should be made by the canvassing board then authorized by sec. 17, chap. 20, Gen. Stat., and that no power was given such canvassers to reject votes for the reason that persons not resident electors had voted at such election. 8 Neb. 290. Since this decision provisions have been made by statute for contesting elections for removal of county seats. Sec. 44 et seq., chapter 26. But this remedy is not exclusive. 11 Neb. 104.

SEC. 2. If canvassers neglect or refuse to count all the votes and fully perform their duty they may be compelled by mandamus. 5 Neb. 147. But they cannot go behind the returns. 10 Neb. 51, 59. 11 Neb. 104.

**SEC. 3. [Special election.]**—At which election the electors of said county shall designate upon their ballots either the name of the place where the county seat is then located, or one of the two places, other than the said county seat, which received the largest number of votes cast at the special election first held, and in canvassing said votes, no votes shall be counted except such as are cast for one of the three places before mentioned.

**SEC. 4. [Re-location.]**—If three-fifths of all said votes so to be counted shall be in favor of the re-location of such county seat at either of the places voted for, the place receiving three-fifths of such votes shall become and remain from and after the first day of the third month next succeeding said election, the county seat of such county.

**SEC. 5. [Further election.]**—If it shall appear upon the canvass of said vote that no one place has received three-fifths of all the votes legally cast at said election, and if it shall further appear that less than two-fifths of all said votes have been cast in favor of the present county seat, said board of county commissioners shall, at the next general election held in such county, again submit to the electors thereof the question of the re-location of the county seat.

**SEC. 6. [Subsequent election.]**—If the present county seat received a less number of votes at the second special election hereinbefore provided for, than either of the other places voted for thereat, then the electors shall designate on their ballots the name of one of the two places, other than said county seat, where they desire the county seat so located, and the one of said places receiving the largest number of votes shall be and become, from and after the first day of January following such election, the county seat of said county; but if at said election only one of the places voted for received more votes than the place where the county seat is then located, the electors of said county shall designate upon their ballots, either the name of the place where the county seat is then located, or of the place which received the highest number of votes cast at the aforesaid special election, and in canvassing said votes no votes shall be counted except such as are cast for one of the two places before mentioned.

**SEC. 7. [Final result.]**—If three-fifths of all said votes so to be counted shall be in favor of the re-location of such county seat, the place so receiving three-fifths of all of said votes, shall become and remain, from and after the first day of January next succeeding said election, the county seat of such county.

**SEC. 8. [Question of re-location not again submitted.]**—If at either of the elections in this act provided for, more than two-fifths of the votes cast shall be in favor of the place where the county seat is then located, the question of the re-location thereof shall not be again submitted for the space of two years from the date of said election, and in case the county seat shall be re-located as herein provided for, the question of the re-location thereof, shall not be again submitted to the electors for the space of five years thereafter.

**SEC. 9. [Duties of county officers.]**—When any such county seat shall have been re-located, it shall be the duty of all county officers to forthwith remove their respective offices, and all county records, papers, and property in their offices or charge, to the place where said county seat shall have been re-located; and any county officer who shall refuse to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and a conviction of any such officer of such misdemeanor shall work a vacancy in his said office.

**SEC. 10. [Repealed sec 8, G. S. 229.]**

## CHAPTER 18.—COUNTIES AND COUNTY OFFICERS.

### ARTICLE I.—GENERAL PROVISIONS.

**SECTION 1. [Boundaries.]**—The boundaries of the several counties of this state shall remain as are established until the same be changed according to law. [1879 § 1, 353.]

ART. I. "An act concerning counties and county officers." Laws 1879, 353. Took effect Sept 1, 1879.

**SEC. 2. [Same.]**—In all cases where any organized county lies adjacent to any boundary line of this state, and it shall appear that any island, territory, or tract of land lies between such county and the state boundary, and is not included within the defined boundaries of any organized county, and is not a military reservation of the United States, such unincorporated island, territory, or tract of land, shall attach to and be part of such adjacent county for all purposes, until otherwise provided by law.

**SEC. 3. [Change in channel of boundary stream.]**—Where any county is bounded by the middle of the channel of any stream or water-course, and by reason of any change of such channel any island or tract of land shall be thrown to the other side of such bounding channel, after the original organization and establishment of the boundaries of any county, the old channel of the stream or water-course shall, for all county and state purposes, be deemed the channel thereof.

**SEC. 4. [Transferring territory.]**—When a majority of the legal voters, residing upon any territory, not less than half of one congressional township, shall petition the county board of their own county, and also of the county to which they desire such territory to be transferred, for leave to have such territory transferred to such county, it shall be the duty of the several county boards so petitioned to submit the question at the next general election in said counties.

**SEC. 5. [Notices of election.]**—Notices of such election shall contain a description of the territory proposed to be transferred, the names of the counties from and to which such transfer is intended to be made, and shall be posted with the other notices for general elections.

**SEC. 6. [Ballots.]**—The ballots used in the said elections may be in the following form, to wit: "For transferring territory," and "Against transferring territory," when, if a majority of the voters voting upon said question in the county from which said territory is proposed to be taken, and a majority of the voters of the county to which the same is proposed to be transferred, shall be "For transferring territory," then the said territory shall be transferred to and become a part of the county to which it is proposed to transfer the same, on and after the first day of January succeeding such election, and shall be subject to all the laws, rules and regulations thereof; *Provided*, That all assessments and collections of taxes, and judicial or other official proceedings commenced prior to said first day of January, shall be continued, prosecuted and completed, in the same manner as if no transfer had been made; *And provided, further*, That all township or precinct officers within said transferred territory shall continue to hold their respective offices within the county to which they may be transferred, until their respective terms of office expire.

**SEC. 7. [Area of counties.]**—No county shall be reduced under the provisions of this act, to less contents than 400 square miles.

**SEC. 8. [Adjustment of debts.]**—No transferred territory under the provisions of this act shall be released from the payment of its proportion of the debts of the county from which such territory is transferred; and such proportionate indebtedness from such transferred territory shall be collected by the county to which such territory is transferred, at an equal or greater rate than is levied and collected in the county from which such territory was transferred—such rate to be ascertained by the certificate of the county clerk of said last named county, and when so collected, to be paid over to the county entitled thereto. The territory so transferred shall not be taxed for the payment of any indebtedness of the county to which said territory is transferred, incurred previous to said transfer.

**SEC. 9. [Unorganized territory.]**—Where any unorganized territory, not exceeding two townships, lies adjoining to and is not embraced within the boundaries of any county, and a majority of the inhabitants of said territory petition to the commissioners of said adjoining county, to be attached to the same, the county board of said county shall, within three months, order an election as provided for in sections 4, 5, and 6, of this act, and said territory shall become attached to

said county by a majority vote of the same, and be subject in all other respects to the provisions of this act.

**SEC. 10. [New county.]**—Whenever it is desired to form a new county out of one or more of the then existing counties, and a petition praying for the erection of such new county, stating and describing the territory proposed to be taken for such new county, together with the name of such proposed new county, signed by a majority of the legal voters residing in the territory to be stricken from such county or counties, shall be presented to the county board of each county to be affected by such division, and it appearing that such new county can be constitutionally formed, it shall be the duty of such county board or county boards to make an order providing for the submission of the question of the erection of such new county to a vote of the people of the counties to be affected, at the next succeeding general election of which the notice shall be given, the votes canvassed, and the returns made as in case of election of county officers, and the form of the ballot to be used in the determination of such question shall be as follows: "For new county," and "Against new county."

**SEC. 11. [Elections.]**—If it shall appear that a majority of all the votes cast at such election, in each of the counties interested, is in favor of the erection of such new county, the county clerk of each of said counties, shall certify the same to the secretary of state, stating in such certificate the name, territorial contents and boundaries of such new county; whereupon the secretary of state shall notify the governor of the result of such election, whose duty it shall be to order an election of county officers for such new county, at such time as he shall designate, and he may, when necessary, fix the place of holding election, notice of which shall be given in such manner as the governor shall direct. At such election the qualified voters of said new county shall elect all county officers for said county, except as hereinafter excepted, who shall be commissioned and qualified in the same manner as such officers are in other counties in this state, and who shall continue in office until the next general election for such officers, and until their successors are elected and qualified, and who shall have all the jurisdiction and perform all the duties which are or may be conferred upon such officers in other counties of this state.

**SEC. 12. [Officers.]**—All the justices of the peace, constables and other township or precinct officers, who were previously elected and qualified in the county or counties from which such new county has been formed, whose term of office shall not have expired at the time of said election, and whose residence shall be embraced within the limits of said new county, shall continue in office until their terms of office shall expire, and until their successors shall be elected and qualified.

**SEC. 13. [Canvass of votes.]**—The votes for the county officers of said new county shall be canvassed, and returns made, by the county clerk or county clerks of the county or counties from which such new county was formed, as provided by law in other cases.

**SEC. 14. [Oath of office—Judicial district.]**—The oath of office may be administered to the several county officers of such new county by any person authorized by law to administer oaths; and as soon as said county officers are duly qualified, the county shall be regarded as legally organized, and for judicial purposes shall be deemed and taken as belonging to the district in which said new county, or the greater part thereof, is embraced, and terms of the district court shall be held at such place in said new county as the county board thereof shall designate, until the county seat thereof shall be permanently located. The times of holding such court shall be appointed by the judge thereof, until otherwise provided by law.

**SEC. 15. [Transfer of suits.]**—The courts of any county or counties from which such new county is erected, may, by proper order, transfer any suit or other legal proceeding affecting real estate in such new county, to the proper court of such new county, or may transfer any suit and all papers and records pertaining thereto to such new county, when all the parties thereto are residents

of such new county; but all judgments and other liens in the county or counties from which such new county was erected, shall have the same effect as if no new county had been erected.

SEC. 16. [**Division of property.**].—All the property, both real and personal, and all the debts and liabilities, and choses in action of every kind belonging to the county or counties from which such new county was formed, shall be divided by the several county boards of the counties interested between the county or counties from which such new county if formed and the new county, in proportion to the assessed value of property for the last preceding year, which has been taken from such original county or counties and carried to such new county; and if such board cannot agree upon such division, they may refer the matters of difference to arbitrators, or the rights to such property may be settled by a suit in the district court, brought by either party for that purpose. In case the said property cannot be divided or removed, the county receiving the same shall pay to the other a proportionate value for the same.

SEC. 17. [**Records for new county.**].—The county clerk of the new county shall transcribe in books prepared for that purpose, from the records of the county or counties from which the new county is formed, all deeds, mortgages, leases and title papers of every description, with the certificate of acknowledgment thereto, and the date of filing the same for record, of lands lying in the new county, which were previously recorded in the county or counties from which the new county was formed; and said clerk shall be allowed by such new county such compensation as his services are reasonably worth. The clerk of such new county shall also prepare a numerical index of the lands and lots in such new county in the same manner as county clerks are by law directed to prepare and keep such index.

SEC. 18. [**Duties of clerk.**].—Said clerk shall note at the end of each paper he shall transcribe the book and page from which the same was transcribed, and shall make a correct double index of said records; and on the completion of his duties said clerk shall return said books to the county clerk of said new county, with his certificate attached thereto, showing that he has complied with the law; whereupon they shall be taken and considered, to all intents and purposes as books of records of deeds, mortgages and title papers for said new county. And copies of said record, certified by the officer having the custody of the same, shall be evidence in all courts and places, in the same manner that copies of records are evidence in other cases, and with like effect.

SEC. 19. [**County seat.**].—The county seat of such new county shall be fixed as provided by law for the fixing of county seats upon the organization of new counties.

#### COUNTY BOARDS.

SEC. 20. [**Corporate names.**].—Each county which has heretofore been, or may hereafter be established in this state, according to the laws thereof, shall be a body politic and corporate, by the name and style of, "The county of ———," and by that name may sue and be sued, plead and may be impleaded, defend and be defended against in any court having jurisdiction of the subject matter, either in law or equity, or other place where justice shall be administered.

SEC. 21. [**County board.**].—The powers of the county, as a body corporate or politic, shall be exercised by a county board, to wit: In counties under township organization by the board of supervisors, which shall be composed of the town and such other supervisors as are or may be elected pursuant to law; in counties not under township organization, by the board of county commissioners.

SEC. 22. [**Powers of county.**].—Each county shall have power: *First.* To purchase and hold the real and personal estate necessary for the use of the county, and to purchase and hold, for the benefit of the county, real estate sold by virtue of judicial proceedings in which the county is plaintiff, or is interested. *Second.* To sell and convey, or lease, any real or personal estate owned by the county.

*Third.* To make all contracts and to do all other acts in relation to the property and concerns of the county, necessary to the exercise of its corporate powers.

**Sec. 23. [Power of county boards.]**—The county boards of the several counties shall have power: *First.* To take and have the care and custody of all the real and personal estate owned by the county. *Second.* To manage the county funds and county business, except as otherwise specifically provided. *Third.* To make all orders respecting the property of the county, to keep the public buildings insured, to sell the public grounds or buildings of the county, and purchase other grounds in lieu thereof. *Fourth.* To lay out, alter, or discontinue any road running through their county, and perform such duties concerning roads as may be prescribed by law. *Fifth.* To examine and settle all accounts against the county, and all accounts concerning the receipts and expenditures of the county. *Sixth.* To authorize the vacation of any city or village plat when the same is not within any incorporated city or village, on the petition of two-thirds of the owners thereof. *Seventh.* To change the name of any city or village plat on the petition of a majority of the legal voters residing therein, when the inhabitants thereof have not become a body corporate.

**Sec. 24. [Public grounds, how sold.]**—The county board shall not sell the public grounds as provided in the third subdivision of the preceding section, without having first submitted the question of selling such public grounds to a vote of the electors of the county.

**Sec. 25. [Duties of the board.]**—It shall be the duty of the county board of each county:

*First. [Taxes.]*—To cause to be annually levied and collected taxes authorized by law for county purposes, not exceeding one dollar and fifty cents on the one hundred dollars valuation, unless authorized by a vote of the people of the county, and in addition thereto sufficient to pay the interest, and create a sinking fund for the payment of the principal, of all indebtedness which existed at the time of the adoption of the constitution, November 1, 1875.

*Second. [Buildings.]*—To erect or otherwise provide, when necessary, and the finances of the county will justify it, and keep in repair, a suitable court house, jail, and other necessary county buildings, and to provide suitable rooms and offices for the accommodation of the several courts of record, the county board, clerk, treasurer, sheriff and clerk of the district court, and to provide suitable furniture therefor. But no appropriations shall be made for the erection of any county buildings, without first submitting the proposition to a vote of the people of the county at a general election, and the same is ordered by two-thirds of the legal voters voting thereon.

*Third. [Fire-proof safes.]*—To provide and keep in repair, when the finance of the county will permit, suitable fire-proof safes for the county clerk and county treasurer.

*Fourth. [Stationery.]*—To provide suitable books and stationery for the use of the county board, county clerk, county treasurer, county judge, sheriff and the clerk of the district court.

*Fifth. [Proceedings.]*—To cause to be published at the close of each annual, regular or special meeting of the board, a brief statement of the proceedings

**Sec. 23.** The grant of power must be strictly construed. The board can only exercise powers specially granted or those incidentally necessary for the purpose of carrying into effect such powers, and where the law prescribes the mode which they must pursue, it excludes all other modes of procedure. 3 Neb. 42, 107; 4 Neb. 157; 6 Neb. 233, 460; 7 Neb. 31, 258; 9 Neb. 331; 10 Neb. 32, 179. And see 9 Neb. 525.—The jurisdiction to examine and settle accounts against the county is exclusive. 6 Neb. 115, 454.—A formal judgment need not be entered by the board. It is sufficient if it appear from their record that a claim presented was either "allowed or rejected." 8 Neb. 441.—Where the compensation for services rendered is definitely fixed by law, the auditing of the account and drawing of a warrant therefor are mere ministerial duties. The board cannot make the compensation any greater nor any less. 7 Neb. 133.—No authority exists for payment by county of a deputy district attorney. 10 Neb. 193. Nor for payment of costs in criminal prosecution except as provided in sections 536 and 541, criminal code. 10 Neb. 397.—County not liable for injuries caused by breaking down of public bridge. 10 Neb. 552. Nor for damages occasioned by reason of the erection of a jail near to one's residence. 5 Neb. 494.

**Sec. 25.** Prior to the passage of this section, the county board could, if they had the necessary funds on hand not pledged for other uses, appropriate the same for erection of public buildings without a vote of the electors, although they could not pledge the credit of the county without such vote. 3 Neb. 405.—When the board refuse to levy a tax clearly provided for by law, it may be compelled to do so by mandamus. 6 Neb. 463.

thereof in one newspaper of general circulation published in the county, and also their proceedings upon the equalization of the assessment roll; *Provided*, That no publication in a newspaper shall be required unless the same can be done at an expense not exceeding one-third of the legal rate for advertising notices.

**Sixth. [Estimate of expenses.]**—At their regular meeting in January of each year, to prepare an estimate of the necessary expenses of the county during the ensuing year, the total of which shall in no instance exceed the amount of taxes authorized by law to be levied during that year, including the amounts necessary to meet outstanding indebtedness as evidenced by bonds, coupons, or warrants legally issued; and such estimate containing the items constituting the amounts shall be entered at large upon their records and published four successive weeks before the levy for that year, in some newspaper published and of general circulation in the county, or if none is published, then in some newspaper of general circulation therein, and no levy of taxes shall be made for any other purpose or amounts than are specified in such estimate as published, but any item or amount may be stricken from such estimate or reduced at the time the levy is made. If any levy shall be made in excess of such estimate, the tax shall not therefore be void, but the members of the county board and their sureties shall be jointly and severally liable upon their official bonds for the full amount of such excess, which shall be collected by civil action as in other cases, for the use of the school fund of the county. If the members of the said board neglect to comply with any other provisions of this section the tax shall not therefore be void, but they shall each be liable to a penalty of five hundred dollars, to be recovered by civil action as in other cases, for the use of the school fund of the county.

**Seventh. [Injuries to public property.]**—That in all cases where any bridge or any public building, the property of any county within this state, shall be injured or destroyed by any person or persons, either negligently, carelessly, or wilfully and maliciously, it shall be the duty of the county board of the proper county, for and in the name of the county, to sue for and recover such damages as shall have occurred by reason thereof, and the money so recovered shall be paid into the treasury of the proper county, and be by the treasurer credited to the fund out of which such bridge or building was constructed or repaired.

**SEC. 26. [Tax in addition to constitutional limit.]**—Whenever the county board shall deem it necessary to assess taxes, the aggregate of which shall exceed the rate of one dollar and fifty cents per one hundred dollars valuation of the property of the county, except when such excess is to be used for the payment of indebtedness existing at the adoption of the constitution, the county board may, by an order entered of record, set forth substantially the amount of such excess required, and the purpose for which the same will be required, and if for the payment of interest or principal, or both, upon bonds, shall in a general way designate the bonds and specify the number of years such excess will require to be levied, and provide for the submission of the question of assessing the additional rate required, to a vote of the people of the county at the next election for county officers after the adoption of the resolution. If the proposition for such additional tax be carried, the same shall be paid in money, and in no other manner.

**SEC. 27. [Submission to people.]**—The mode of submitting questions to the people for any purpose authorized by law, shall be as follows: The whole question, including the sum desired to be raised, or the amount of the tax desired to be levied, or the rate per annum, and the whole regulation, including the time of its taking effect, or having operation, if it be of a nature to be set forth, and the penalty of its violation, if there be one, is to be published for four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by being posted up in at least one of the most public places in each election precinct in the county, and in all cases the notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election.

**SEC. 28. [Same.]**—When the question submitted involves the borrowing or expenditure of money, or issuance of bonds, the proposition of the question must be accompanied by a provision to levy a tax annually for the payment of interest, if any, thereof, and no vote adopting the question proposed shall be valid unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

**SEC. 29. [Canvass.]**—At the time specified in such notice, a vote of the qualified electors shall be taken in each precinct, at the place designated in such notice. The votes shall be received, and returns thereof made, and the same shall be canvassed by the same officers and in the same manner as required at each general election.

**SEC. 30. [Vote—Record—Result.]**—If it appears that two-thirds of the votes cast are in favor of the proposition, and the requirements of the law have been fully complied with, the same shall be entered at large by the county board upon the book containing the record of their proceedings, and they shall then have power to levy and collect the special tax in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the county board.

**SEC. 31. [Tax to be a special fund.]**—Money raised by the county board in pursuance to the provisions of the preceding sections of this act, is specially appropriated and constituted a fund, distinct from all others, in the hands of the county treasurer until the obligation assumed be discharged.

**SEC. 32. [Witnesses and jurors when county interested.]**—On the trial of any suit in which a county be interested, the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent and qualified according to law.

**SEC. 33. [Warrants.]**—Upon the allowance of any claim or account against the county, the county board shall direct the county clerk to draw a warrant upon the county treasurer in payment thereof, such warrant to be signed by the chairman of the county board, countersigned by the county clerk, and sealed with the county seal, but the same shall not be delivered to the party until the time for taking an appeal has expired, and if such appeal be taken then not until the same shall have been determined.

**SEC. 34. [Warrants not to exceed 75 per cent. of amount levied.]**—It shall not be lawful for any warrant to be issued for any amount exceeding in the aggregate 75 per cent. of the amount levied by tax for the current year, except there be money in the treasury to the credit of the proper fund for the payment of the same. Nor shall the county board issue any certificate of indebtedness in payment of any account or claim in any form whatever, but all accounts against a county which cannot be paid by warrant as herein provided, shall be filed, numbered and recorded and paid as aforesaid in the order of their entry upon the record, whenever a warrant can be drawn under the provisions of this section. [As amended Feb. 28. Took effect June 1, 1881.]

**SEC. 35. [Warrant—Recitals.]**—Each warrant shall specify the amount levied and appropriated to the fund upon which it is drawn, and the amount already expended of such fund.

**SEC. 36. [Warrant in excess.]**—Any warrant drawn after 75 per cent. of the amount levied for the year is exhausted, and where there are no funds in the treasury for the payment of the same, shall not be chargeable as against the county, but may be collected by civil action from the county board making the same, or any member thereof. [As amended Feb. 28. Took effect June 1, 1881.]

SEC. 28. In the former law (G. S. § 19, 236) the words "or issuance of bonds" was not included. It was held that the section related solely to questions of borrowing money or of extraordinary outlays by a county, and not to bonds issued for works of "internal improvement." 6 Neb. 53.

SEC. 34. Under the old law no warrants could be drawn in excess of the levy and no authority existed for the issuance of certificates of indebtedness. 9 Neb. 452. A tax levied to pay such certificate was held void. Id. The statute of limitation does not apply to actions on county warrants, but an action upon a warrant will not lie until there is money in the treasury for its payment or time has elapsed for the collection of the money by taxation. 1 Neb. 384. Warrants cannot be drawn except in pursuance of express statutory authority. 10 Neb. 32. The limitation in this section applies to all claims. 10 Neb. 198.



**SEC. 37. [Claims against county—Appeal.]**—Before any claim against a county is audited and allowed, the claimant or his agent shall verify the same by his affidavit, stating that the several items therein mentioned are just and true, and the services charged therein, or articles furnished, as the case may be, were rendered or furnished as therein charged, and that the amount claimed is due and unpaid after allowing all just credits. All claims against a county must be filed with the county clerk. And when the claim of any person against a county is disallowed, in whole or in part, by the county board, such person may appeal from the decision of the board to the district court of the same county, by causing a written notice to be served on the chairman, within twenty days after making such decision, and executing a bond to such county, with sufficient security, to be approved by the county clerk, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant.

**SEC. 38. [Appeal by taxpayer.]**—Any taxpayer may likewise appeal from the allowance of any claim against the county by serving a like notice, and giving a bond similar to that provided for in the preceding section.

**SEC. 39. [Transcript on appeal.]**—The clerk of the board, upon such appeal being taken, and being paid the proper fees therefor, shall make out a complete transcript of the proceedings of the board relating to the matter of their decision thereon, and shall deliver the same to the clerk of the district court; and such appeal shall be entered, tried and determined the same as appeals from justice courts, and costs shall be awarded thereon in like manner.

**SEC. 40. [Reconsideration of claims.]**—The provisions of this subdivision shall not be so construed as to prevent the county board from once reconsidering their action on any claim upon due notice to parties interested.

**SEC. 41. [Funds kept separate.]**—Whenever a tax is levied for the payment of a specific debt, the amount of such tax collected shall be kept as a separate fund in the county treasury, and expended only in the liquidation of such indebtedness; *Provided*, That any surplus remaining in the treasury after full payment of such indebtedness, shall be transferred to the general fund of the county.

**SEC. 42. [Field notes of original survey—Map.]**—A copy of the field notes of the original survey of each county by the United States, shall be procured, and a map of the county shall be constructed in accordance therewith on a scale of not less than one inch to the mile, and laid off in townships and sections. Such map and field notes shall be deposited in the office of the county clerk, and be by him preserved. Whenever the boundaries of any county are changed, the necessary alteration in such map may be made, or a new map of the county may be made if the county board so direct.

**SEC. 43. [Settlement of accounts.]**—All persons chargeable with money belonging to any county shall render their accounts to and settle with the county board at the time required by law, and pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county within five days thereafter.

**SEC. 44. [Same by county board.]**—If any person thus chargeable shall neglect or refuse to render true accounts or settle as aforesaid, the county board shall adjust the accounts of such delinquent, according to the best information they can obtain, and ascertain the balance due the county, and may institute the proper action to recover such balance so found due.

**SEC. 45. [Penalty.]**—In such case, the delinquent shall not be entitled to any commission, and shall forfeit and pay to the county a penalty of twenty per

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SEC. 37. The remedy by appeal is exclusive. An original action on an account against a county cannot be maintained. 6 Neb. 116, 454. And equity will not interfere at the suit of a taxpayer to enjoin the payment of a claim against the county, in the absence of fraud. The taxpayer has his remedy by appeal. 6 Neb. 203. A formal judgment need not be entered. It is sufficient to sustain an appeal in the district court if the record of the board shows the proper presentation of a claim and its allowance or rejection. 8 Neb. 441. The board cannot be compelled to audit an account, but may be compelled to act thereon. 10 Neb. 382. An admission by the board of the justness of a claim is no bar to an appeal. Id. A claim accruing in 1879 may be paid from levy of 1980. Id.

SEC. 40. This was not so under the old law. 6 Neb. 460. 7 Neb. 130.

cent. on the amount found due the county. Such penalty shall be added to the amount so found due, and it shall be the duty of the court, in which any action is brought to recover the same, to include such penalty in any judgment which may be rendered against the delinquent in such action; such penalty when collected to be paid into the county treasury for the benefit of the school fund.

**SEC. 46. [County seal].**—The board shall procure and keep a seal, with such emblems and devices as they may think proper, which shall be the seal of the county, and no other seal shall be used by the county clerk, except where the county clerk is *ex-officio* clerk of the district court, in which case he shall use the seal of said court in all matters and proceedings therein. The impression of said seal by stamp, shall be a sufficient sealing in all cases where sealing is required.

**SEC. 47. [County attorney].**—The county board may, when they deem it necessary, employ an attorney to prosecute and defend all actions in which the county is a party or may be interested, and to advise such board upon any matter pending before them, but the compensation allowed such attorney shall not in any one year exceed the sum of one thousand dollars.

**SEC. 48. [Delinquent personal taxes offset to claims].**—The county board of any county, whenever the account or claim of any person against the county is presented to them for allowance, may, in their discretion, procure from the county treasurer a certificate of the amount of delinquent personal taxes assessed against the person in whose favor the account or claim is presented, and may deduct from any amount found due upon such account or claim the amount of such tax, and issue a warrant for the balance remaining.

**SEC. 49. [Same].**—For any such delinquent personal taxes so set off and deducted from any such account or claim, the board shall issue an order to the county treasurer directing him to draw from the same fund out of which said account or claim should have been paid, the amount of said delinquent taxes so set off or deducted, and apply the same upon the said delinquent personal taxes in satisfaction thereof; and the said treasurer shall, upon application, receipt therefor to the person whose taxes are so satisfied.

**SEC. 50. [Same in suits].**—In any suit against a county, any delinquent personal taxes assessed against the person in whose favor the cause of action accrued, may be set off against any amount claimed in such action.

**SEC. 51. [Contracts].**—No county officer shall in any manner, either directly or indirectly, be pecuniarily interested in, or receive the benefit of any contracts executed by the county for the furnishing of supplies, or any other purpose; neither shall any county officer furnish any supplies for the county on order of the county board without contract.

**SEC. 52. [Penalty].**—Any county officer violating the provisions of the preceding section shall be deemed guilty of a felony, and upon conviction thereof, shall be imprisoned in the penitentiary for a period not exceeding five years, or fined in any sum not exceeding two thousand dollars, or both imprisoned and fined as aforesaid.

**SEC. 53. [Commissioners].**—The board of county commissioners shall consist of three persons. They shall have the qualifications of electors, and shall be elected in their respective districts at the annual general election.

**SEC. 54. [Districts].**—Each county shall be divided into three districts,

SEC. 47. The act "authorizing county commissioners to employ attorneys in certain cases," (Laws 12th Sess. Ter. 1867, 12, G. S. 247,) being evidently repealed by implication, is omitted from the text. That act is as follows: SECTION 1. That county commissioners are hereby authorized to employ attorneys in any case, either civil or criminal, in which their county is interested, when the cause is taken to the supreme court of this state, or before any United States court; and they are hereby authorized to pay a reasonable compensation for such services. SEC. 2. The prosecuting attorney shall prosecute all criminal cases before justices of the peace in their respective counties, and the county commissioners shall allow a reasonable compensation for such services. [See ante, p. 66.]

SEC. 54. By "An act requiring a compliance with the provisions of section 54 of an act entitled, "An act concerning counties and county officers," it is provided that "when counties which were divided into districts prior to the passage of an act entitled, 'An act concerning counties and county officers,' approved March 1, A. D. 1879, have not since been redivided, the same shall, within sixty days after this act shall take effect, be redivided into districts, in accordance with the provisions of section 54, of said act." Approved Mar. 3. Took effect June 1, 1881.

numbered respectively one, two and three, and shall be composed of two or more voting precincts, comprising compact and contiguous territory, and embracing as near as may be possible one-third of the population of the county, and not subject to alteration oftener than once in three years; and one commissioner shall be elected from each of said districts by the qualified electors of the whole county, as hereinbefore provided. The district lines shall not be changed at any session of the board, unless all of the commissioners are present at such session.

**SEC. 55. [Term of office.]**—At the first election held to choose the board of commissioners under this act in any county, the person having the highest number of votes shall continue in office for three years; the next highest two years, and the next highest one year; but if any two or more persons have the same number of votes, their term of office shall be determined by the board of canvassers, and each commissioner elected at the first general election, as herein provided, shall hold his office for three, two and one years, as the case may be, and until his successor is elected and qualified, and each commissioner elected thereafter, in pursuance of the foregoing section, shall hold his office for three years, and until his successor is elected and qualified.

**SEC. 56. [Session of board.]**—The county commissioners shall meet and hold sessions for the transaction of county business, at the court house in their respective counties, or at the usual place of holding sessions of the district court, on the second Tuesday in January, third Monday in June, and first Monday in October of each year, and may adjourn from time to time.

**SEC. 57. [Special sessions.]**—The county clerk shall have power to call special sessions when the interests of the county demand it, upon giving five days notice of the time and object of calling the commissioners together, by posting up notices in three public places in the county, or by publication in a newspaper published therein.

**SEC. 58. [Decision of questions.]**—When two only of the commissioners of the board shall attend, and shall be divided on any question, the decision thereof shall be deferred until the next meeting of the board, and then the matter shall be decided by a majority of the board.

**SEC. 59. [Chairman—Shall sign warrants.]**—The commissioner whose term of office expires within one year, shall be chairman of the board for that year, and he shall sign all warrants on the treasurer for money to be paid out of the county treasury.

**SEC. 60. [Precincts.]**—Each board of county commissioners shall divide the county into convenient precincts; and, as occasion may require, erect new ones, subdivide precincts already established, and alter precinct lines. And whenever any portion of territory containing in the aggregate not less than one township of land, and not more than four townships lying contiguous, shall contain not less than fifteen voters, it shall be the duty of the county commissioners, on receipt of a petition, signed by a majority of the legal voters therein to constitute such portion of the territory a voting precinct.

**SEC. 61. [Division of precinct not to affect existing officers.]**—When a precinct shall be divided, any justice of the peace or constable of the original precinct shall continue to act as such in the newly created precinct, in which he may reside at the time of the division, the same as if the precinct had not been divided.

SEC. 55. This section is a re-enactment of sec. 9, G. S. 233, and a continuation of that act. In such case the effect is to continue the uninterrupted operation of the statute. 9 Neb. 203.

SEC. 56. The board cannot make contracts away from the county seat. 4 Neb. 160; 10 Neb. 179.

SEC. 57. When convened in special session the board are not confined strictly to business specified in the notice, but may make orders concerning "the property of the county." 5 Neb. 229. (The decision in this case, which was under the same section, seems however to be based upon the fact that another section gave the board general powers "at any meeting." This sentence is now omitted. See section 23, this chapter. See also sec. 63.)

SEC. 59. Under the former law all warrants were drawn by the chairman. This is now changed (see sec. 33) and warrants are drawn by the county clerk. 8 Neb. 216.

SEC. 60. Character and powers of precincts defined, 10 Neb. 20. This and sec. 61 superseding secs. 1, 2, chap. 41, R. S. 278, those sections are omitted from this volume.

## COUNTY SUPERVISORS.

**Sec. 62. [County board—Meetings.]**—The county boards of the several counties in this state that may adopt township organization shall be composed of the supervisors of the organized townships thereof, and the supervisors from cities of the first and second class and villages; such supervisors shall hold two regular meetings in each year at the county seat in their respective counties, for the transaction of general business as a board of supervisors. They may hold special meetings at such times as they may find convenient, and shall have power to adjourn from time to time as they may deem necessary. They may also hold such other meetings as are by law provided.

**Sec. 63. [Special meetings.]**—Special meetings of the board of supervisors shall be held only when requested by at least one-third of the members of the board, which request shall be in writing, addressed to the clerk of the board, and specifying the time and object of such meeting; upon reception of which request, the clerk shall immediately notify in writing each member of the board of the time and object of such meeting, and shall cause notice of such meeting to be published in some newspaper of the county, if any shall be published therein; *Provided*, That no business shall be transacted at any special meeting, except such as is specified in the call.

**Sec. 64. [Regular meetings.]**—The regular meetings of the board of supervisors in all counties having township organization, shall be held on the second Tuesday in January, and first Tuesday in June.

**Sec. 65. [Chairman.]**—The board of supervisors at their first regular meeting of each year shall organize by choosing one of their number as chairman, who shall preside at all meetings of the board during the year; and in case of his absence at any meeting, the members present shall choose one of their number as temporary chairman.

**Sec. 66. [Certificate of election.]**—The supervisors shall severally lay before the board of supervisors, at the first regular meeting after election, their several certificates of election, which shall be examined by the board of supervisors, and if found regular, shall be filed in the office of the county clerk.

**Sec. 67. [Aid to roads and bridges.]**—In addition to the powers hereinbefore conferred upon all county boards, the board of supervisors shall have power to appropriate funds to aid in the construction of roads and bridges not exceeding two mills of the levy for the current year for general purposes, except by a vote of the people authorizing them to expend a greater amount; to change the boundaries of towns, and to create new towns as provided by law, to designate and give names thereto, and to fix the place of holding the first town meeting therein; and to change the name of any town upon the petition of a majority of the voters of said town.

**Sec. 68. [Quorum.]**—Two-thirds of all the supervisors elected in any county shall constitute a quorum for the transaction of business, and all questions which shall arise at meetings shall be determined by the votes of a majority of the supervisors present, except in cases otherwise provided for.

**Sec. 69. [Proceedings to be public.]**—The board of supervisors shall sit with open doors, and all persons may attend their meetings.

**Sec. 70. [Chairman may administer oath.]**—Every chairman of the board of supervisors shall have power to administer an oath to any person concerning any matter submitted to the board, or connected with their powers and duties.

**Sec. 71. [Books and records.]**—In order to insure uniformity in the keeping of town records and other matters pertaining to the duties of town officers, it shall be the duty of the board of supervisors to purchase for the use of the respective towns suitable books and blanks thereof, the cost in the first instance to be paid by warrant upon the county treasury, and the amount to be charged to the respective towns, and levied and collected with other town taxes.

**Sec. 72. [Naming towns.]**—Whenever the board of supervisors shall cre-

ate a new town, or change the name of an existing town, the proceedings in giving a name to such new town, or changing the name of an existing town, shall be as follows: The proposed name to be given to such new town, or existing town, shall be filed in the office of the auditor of public accounts, there to be retained for at least one year; and the auditor of public accounts, at any time after the filing of such proposed name, shall upon application of said board, grant his certificate stating that such proposed name, from information appearing in his office, has not been adopted by any city, town, village, or municipal corporation in this state; which certificate must be obtained by said board before any action whatever shall be taken by said board toward making such change of name; and all proceedings instituted in any court or other place, under a name changed, without complying with the provisions of this section, shall be held to be void and of no effect. If such name has been adopted elsewhere in this state, the auditor of public accounts shall so notify the board, whereupon another name shall be filed in his office, which shall there remain in a like manner as hereinbefore provided, and the certificate shall be issued by the auditor of public accounts immediately after such filing, stating that such name has not been elsewhere adopted; whereupon said board may proceed to make such change of name, and not before; and all proceedings pending, and all rights and privileges acquired in the name of such town, by such town, or by any person residing therein, shall be secured to such town or person, and such proceedings continued to final consummation in such name, the same as though the same had not been changed.

#### COUNTY CLERKS.

SEC. 73. [**Special duties.**].—The county clerk shall keep his office at the county seat; shall attend the sessions of the county board; keep the seal, records, and papers of said board; and shall sign the record of the proceedings of the board, and attest the same with the county seal.

SEC. 74. [**General duties.**].—It shall be the general duty of the county clerk: 1st. To record, in a book provided for that purpose, all proceedings of the board. 2nd. To make regular entries of their resolution and decisions in all questions concerning the raising of money. 3rd. To countersign all warrants issued by the board, and signed by its chairman. 4th. To preserve and file all accounts acted upon by the board, with their action thereon; and he shall perform such special duties as are required of him by law.

SEC. 75. [**Warrants.**].—Such clerk shall not issue any county warrants unless ordered by the board of commissioners authorizing the same; and every such warrant shall be numbered consecutively as allowed from the first day of January to the thirty-first day of December in each year, and the date, amount and number of the same and the name of the person to whom it is issued, shall be entered in a book called "Warrant Book," to be kept by the clerk in his office for that purpose. When any warrant is returned as cancelled, the clerk shall note the date of cancellation opposite such entry.

SEC. 76. [**Bond record.**].—The county clerk shall keep a book, in which shall be entered in alphabetical order, by name of the principal, a minute of all official bonds filed in his office, giving the name of the office, amount and date of bond, names of sureties and date of filing, with proper reference to the book and page where the same is recorded.

SEC. 77. [**Road record.**].—It shall be the duty of the county clerk to record in a proper book, to be called the "Road Record," a record of the proceedings in regard to laying out and establishing, changing or discontinuing roads in the county.

SEC. 78. [**Register of deeds.**].—The county clerk shall be *ex-officio* register of deeds, and shall have the custody of, and safely keep and preserve, all books, records, maps, and papers kept or deposited in his office; he shall also record, or cause to be recorded, in suitable books, all deeds, mortgages, instruments and writings authorized by law to be recorded in his office and left with him or that purpose.

SEC. 79. [**Index.**]—The county clerk must keep an index in his office, the pages of which shall be divided into eight columns, with heads to the respective columns as follows, to wit:

Grantors.	Grantees.	Date of Filing.	Date of Instrument.	Character of Instrument.	Book.	Page.	Description of Tract.
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SEC. 80. [**Entries in index.**]—The entries in such index shall be double, the one showing the names of the respective grantors, arranged in alphabetical order, the other those of the grantees in like order. When there are two or more grantors having different surnames, there must be as many distinct entries among the grantors as there are names, being alphabetically arranged in regard to each of such names. The same rule shall be followed in case of several grantees.

SEC. 81. [**Endorsement of instrument.**]—The county clerk must indorse upon every instrument properly filed in his office for record, the minute, hour, day, month and year when it was so filed, and shall forthwith enter the same in the index herein provided for, except that of the book and page where the record of the instrument may be found. After the same shall have been recorded, the book and page where it may be found shall be endorsed thereon.

SEC. 82. [**Deed and mortgage records.**]—Different sets of books shall be provided for the recording of deeds and mortgages; in one of which sets all conveyances absolute in their terms, and not intended as mortgages, or as securities in the nature of mortgages, shall be recorded; and in the other set, such mortgages and securities shall be recorded.

SEC. 83. [**Mechanics' lien record.**]—The county clerk shall also keep a separate book to be called the "Mechanics' Lien Record," in which all instruments provided by law for securing mechanics' liens shall be recorded.

SEC. 84. [**Numerical index.**]—The county clerk shall keep a numerical index as near as possible in the following form:

NUMERICAL INDEX.....COUNTY, NEBRASKA.															
SECTION.... TOWNSHIP.... RANGE....															
		NE $\frac{1}{4}$		NW $\frac{1}{4}$		SW $\frac{1}{4}$		SE $\frac{1}{4}$							
Grantee.	Grantor.	Kind of Instrument.												Acres.	Book.
														Page.	Remarks.

SEC. 85. [**Entries in numerical index.**]—It shall be the duty of every person requiring any conveyance of reality or interest therein, including mechanics' liens, to be entered upon said numerical index, prior to the recording thereof, and no instrument shall be received for record by the county clerk until the same has been presented for transfer in said numerical index, and the fees provided by law for so entering the same on said index have been paid.

SEC. 86. [**Endorsement.**]—After such instrument has been so entered on said index, it shall be the duty of the county clerk to indorse upon said instrument a certificate, showing that the same has been indexed, as herein required, and thereupon the clerk shall record said instrument, as now provided by law.

SEC. 84. A mistake in entering description on numerical index, the instrument being in all other particulars properly recorded and indexed, does not vitiate the record. 10 Neb. 584. Fees for entering on numerical index, see sec. 48, chap. 28, post.

**SEC. 87. [Miscellaneous record.]**—The county clerk shall also keep a separate book to be called the "Miscellaneous Record," in which all papers, instruments, and writing not entitled to be recorded in any of the books hereinbefore provided for, shall be recorded.

**SEC. 88. [Indices.]**—The county clerk shall keep an index, showing all mortgages and discharges of mortgages left for record, and entitled to be recorded, in the same form as is required of deeds. He shall keep a separate index to the volumes of mechanics' lien records, and to the volumes of miscellaneous records.

**SEC. 89. [Account with county treasurer.]**—The county clerk shall keep a distinct account with the treasurer of the county for each several term for which the treasurer may be elected, in a book to be provided for that purpose, commencing from the day on which the treasurer became qualified, and continuing until the same or another person is qualified as treasurer; in which account he shall charge the treasurer as follows: With the amount of taxes levied and assessed in each year as the same appears on each tax list, delivered to him during his term of office; with the amount of money, and with the amount of state, county, and general fund warrants, road orders, or other evidences of indebtedness, which the county treasurer may have been authorized to receive from his predecessors in office; with the amount of any additional assessments made after the delivery of any tax list; with the amount of any additional penalty added to the taxes, after the same become delinquent according to law; with the amount due the county for advertising lands for sale for delinquent taxes; with the amount of the school fund received from the state treasurer; with the amount received from the sale of any property belonging to the county; with the amount received as fines and forfeitures; with the amount received from dram shop, tavern, grocery, or other license; with the amount of money received from any other source authorized by law. And upon presentation of proper vouchers, shall credit him as follows: With the amount of all county, school district, or other tax, which has been paid over to the proper authority and receipted for; with the amount of county warrants received by the county treasurer, and returned to the county board and canceled; with the amount paid to the state treasurer, and to school district treasurers, or other officers entitled by law to receive the same; with the amount of delinquent taxes and any additional penalty due thereon; with the amount due on lands and lots, for advertising the same for sale; with the amount of double and erroneous assessments of property; with the amount of percentage fees allowed by law to the county treasurer for collecting taxes; with the amount of money and the amount of warrants, or orders or other evidences of indebtedness which the county treasurer is allowed by law to receive for taxes, which he pays over to his successor in office; with the amount of taxes uncollected on the tax list delivered over to his successor in office.

**SEC. 90. [Report to secretary of state.]**—It shall be the duty of the county clerk to report to the secretary of state on or before the first day of December, annually, the names of all the county officers with their official signatures and seals of their respective offices, and whenever any change is made in the incumbent of any county office, the change shall be forthwith reported by the county clerk to the secretary of state, who shall preserve and record such lists with changes subsequently made therein.

#### COUNTY TREASURER.

**SEC. 91. [Duties.]**—It shall be the duty of the county treasurer to receive all money belonging to the county, from whatsoever source derived, and all other money which is by law directed to be paid to him. All money received by him for the use of the county shall be paid out by him only on the warrants issued by the county board according to law, except where special provision for the payment thereof is or shall be otherwise made by law.

SEC. 89. See 9 Neb. 431.

SEC. 91. Payment of precinct bonds or coupons can only be made by warrants drawn by the county board. 9 Neb. 461.

SEC. 92. [**Warrants.**].—All warrants issued by the county board shall, upon being presented for payment, if there is not sufficient funds in the treasury to pay the same, be endorsed by the treasurer, "not paid for want of funds," and the treasurer shall also endorse thereon the date of such presentation and sign his name thereto. Warrants so endorsed shall draw interest from the date of such endorsement, at the rate of seven per cent. per annum until paid. No account or claim whatsoever against a county which has been allowed by the board, shall draw interest until a warrant shall have been drawn in payment thereof and endorsed as herein provided.

SEC. 93. [**Additional duties.**].—The county treasurer shall perform such additional duties as are or may be prescribed by law.

SEC. 94. [**Removal from office.**].—If any county treasurer shall neglect or refuse to render any account or settlement required by law, or shall fail or neglect to account for any balance due the state, county, township, school district, or any other municipal subdivision, or is guilty of any other misconduct in office, the county board may forthwith remove him from office, and appoint some suitable person to perform the duties of treasurer, until his successor is elected or appointed and qualified.

SEC. 95. [**Duplicate receipts.**].—Whenever any person shall pay any money into the county treasury, the county treasurer shall give such person duplicate receipts, and the person receiving such duplicate receipts shall present them to the county clerk, who shall countersign one of said receipts, and return it to the person entitled thereto, and retain the other in his office; and no receipt so given shall be evidence of payment of such money, in the hands of any person except the county clerk, unless the same shall first be countersigned by said clerk.

#### CORONER.

SEC. 96. [**When to act as sheriff.**].—When there shall be no sheriff in the county organized for judicial purposes, it shall be the duty of the coroner to exercise all the powers and duties of the sheriff of his county until a sheriff is elected and qualified.

SEC. 97. [**Inquest.**].—The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When he has notice of the dead body of a person, supposed to have died by unlawful means, found or being in his county, he is required to issue his warrant to a constable of his county, requiring him to summon forthwith six lawful men of the county to appear before the coroner, at a time and place named in the warrant.

SEC. 98. [**Warrant.**].—The warrant may be in substance as follows:

*The state of Nebraska, — county. To any constable of said county:*

In the name of the people of the state of Nebraska, you are hereby required to summon forthwith six lawful men of your county to appear before me at ———, on the ——— day of ———, 18—, then and there to hold an inquest upon the dead body of ———, there lying, and by what means he died.

Witness my hand this — day of —, A. D. 18—.

—————, Coroner.

SEC. 99. [**Execution of warrant.**].—The constable shall execute the warrant and make return thereof, at the time and place therein named.

SEC. 100. [**Jury.**].—If any juror fails to appear, the coroner shall cause the proper number to be summoned or returned from the by-standers immediately, and proceed to empanel them and administer the following oath in substance:

You do solemnly swear that you will diligently inquire and true presentment make, when, how, and by what means the person whose body lies here dead, came to his death, according to your knowledge and the evidence given you, so help you God.

SEC. 101. [**Penalties against jurors.**].—Whoever, being so summoned as

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SEC. 94. The proceedings to remove must be under provisions of Gen. Stat., 250. Sec. 1, art. II, this chapter. The board cannot act summarily. They cannot resolve and declare the office vacant. There must be a judgment of ouster. 10 Neb. 454. The fact that the public funds have been stolen from the treasury is no legal justification for the failure of the treasurer to account for them. Id.



a juror, fails or refuses, without good cause, to attend at the time and place required, or appearing, refuses to act as such juror, or misbehaves while acting as such juror, shall, on complaint of the coroner before any justice of the peace in the county, be fined not less than three nor more than twenty dollars.

**SEC. 102. [Subpoenas.]**—The coroner may issue subpoenas within his county for witnesses, returnable forthwith, or at such time and place as he shall therein direct.

**SEC. 103. [Oath to witness.]**—An oath shall be administered to the witnesses in substance as follows :

You do solemnly swear that the testimony which you shall give to this inquest concerning the death of the person here lying dead, shall be the truth, the whole truth and nothing but the truth, so help you God.

**SEC. 104. [Recognizance.]**—If the evidence of any witness shall implicate any person as the unlawful slayer of the person over whom the said inquisition shall be held, the coroner shall recognize such witness in such sum as he may think proper, to be and appear at the next term of the district court for the said county, there to give evidence of the matter in question, and not depart without leave. Such recognizance shall be in the same form, as near as practicable, and have the same effect as recognizances taken before justices of the peace in cases of felony.

**SEC. 105. [Verdict.]**—The jurors having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands, in substance as follows, and stating the matter in the following form, as near as practicable :

*State of Nebraska, — county.* At an inquisition holden at ———, in ——— county, on the ——— day of ———, A. D. 18—, before me, ———, coroner of said county, upon the body of ———, lying dead, by the jurors whose names are hereto subscribed, the said jurors upon their oath do say ——— (here state when, how, by what person, means, weapon or accident, he came to his death, and whether feloniously.)

In testimony whereof, the said jurors have hereunto set their hands the day and year aforesaid,

Attest:

—————, Coroner.

**SEC. 106. [Warrant to arrest.]**—If the person charged be present, the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace for examination, or if the person charged be not present, and the coroner believes he can be taken, he may issue a warrant to the sheriff or constable, requiring him to arrest the person and take him before a justice of the peace for examination.

**SEC. 107. [Jurisdiction.]**—The warrant of a coroner in the above stated cases shall be of equal authority with that of a justice of the peace; and when the person charged is brought before the justice, he shall be dealt with as a person held under a complaint in the usual form.

**SEC. 108. [Contents of warrant.]**—The warrant of the coroner shall recite substantially the verdict of the jury of inquest, and such warrant shall be a sufficient foundation for the proceedings of the justice instead of a complaint.

**SEC. 109. [Return to district court.]**—The coroner shall return to the district court the inquisition, the papers connected with the same, and a list of the names of witnesses who testify in the matter.

**SEC. 110. [Disposition of property.]**—When any valuable personal property, money or papers, are found upon or near the body upon which an inquest is held, the coroner shall take charge of the same and deliver the same to those entitled to its care or possession; but if not claimed, or if the same shall be necessary to defray expenses of the burial, the coroner shall, after giving ten days notice of the time and place of sale, sell such property, and after deducting coroner's fees and funeral expenses, deposit the proceeds thereof, and the money and papers so found, with the county treasurer, taking his receipt therefor, there to remain subject to the order of the legal representatives of the deceased, if claimed

within five years thereafter, or if not claimed within that time, to vest in the school fund of the county.

SEC. 111. [**Disposition of dead bodies.**].—The coroner shall cause the dead body of each deceased person, which he is caused to view, to be delivered to the friends of the deceased, if there be any, but if there be none, he shall cause the body to be decently buried, and the expenses shall be paid from any property belonging to the deceased, or if there be none, from the county treasury, by warrant drawn thereon.

SEC. 112. [**Sheriff to act as coroner.**].—When there is no coroner, and in case of his absence, or inability to act, the sheriff of the county is authorized to discharge the duties of coroner in relation to dead bodies.

SEC. 113. [**Surgeons.**].—If the coroner or jury deem it necessary, for the purposes of an inquisition, to summon any surgeons, the coroner shall issue a subpoena for those preferred, the same as for any other witness.

SEC. 114. [**Warrant for suspected person.**].—The coroner is hereby authorized and required, on a request of a majority of the coroner's jury, to issue his warrant for any person suspected of having committed the crime of murder, and hold such person on said warrant until the inquest over the body is closed.

SEC. 115. [**Effect of verdict.**].—The verdict of the coroner's jury, charging any person with murder or manslaughter, shall have the same force and effect as the finding of a bill of indictment by the grand jury, until the case shall have been investigated by a grand jury, and they shall have made their return thereon.

#### SHERIFFS AND CONSTABLES.

SEC. 116. [**Duties.**].—It is the duty of the sheriff to serve, or otherwise execute according to law, and return, writs or other legal process issued by lawful authority, and to him directed or committed, and to perform such other duties as may be required of him by law.

SEC. 117. [**Penalty for non performance.**].—His disobedience of the command of any such process is a contempt of the court from which it was issued, and may be punished by the same accordingly, and he is further liable to the action of any person injured thereby.

SEC. 118. [**Custody of jail.**].—He shall have charge and custody of the jail, and the prisoners of the same, and is required to receive those lawfully committed, and to keep them himself, or by his deputy jailor, until discharged by law.

SEC. 119. [**Conservator of the peace.**].—The sheriff and his deputies are conservators of the peace, and to keep the same, to prevent crime, to arrest any person liable thereto, or to execute process of law, may call any person to their aid; and, when necessary, the sheriff may summon the power of the county.

SEC. 120. [**Attendance at court.**].—The sheriff shall attend upon the district court at its sessions in his county, and he is allowed the assistance of two constables, and of such further number as the court may direct, and shall attend the sessions of the county court when required by the judge.

SEC. 121. [**Not to appear as attorney.**].—No sheriff, or his deputy or constable shall appear in any court as attorney or counselor for any party, nor make any writing or process to commence or to be in any manner used in the same, and such writing or process made by any of them shall be rejected.

SEC. 122. [**Nor purchase property.**].—No sheriff, or his deputy or constable, shall become the purchaser, either directly or indirectly, of any property by him exposed to sale under any process of law or equity; and every such purchase is absolutely void.

SEC. 123. [**Process unexecuted upon vacancy.**].—Sheriffs and their deputies may execute any process which may be in their hands at the expiration of their office; and in case of a vacancy occurring in the office of sheriff from any cause, his deputies shall be under obligation to execute legal process then in his or their hands, and he and they will remain liable under the provisions of law as in other cases.

**Sec. 124. [Books and papers.]**—When a sheriff goes out of office he shall deliver to his successor all books and papers pertaining to the office, and property attached or levied upon (except as provided in the preceding section), and all prisoners in jail, and take his receipt specifying the same, and such receipt shall be sufficient indemnity to the person taking it.

**Sec. 125. [Special deputy.]**—A sheriff may appoint a special deputy to serve any summons, by indorsement thereon substantially as follows: "I hereby appoint \_\_\_\_\_ my special deputy to serve the within writ;" which shall be dated and signed by the sheriff.

**Sec. 126. [Return of special deputy.]**—Such special deputy shall make return of the time and manner of serving such writ, under his oath, and for making a false return he shall be guilty of perjury, and punished accordingly.

#### SURVEYOR.

**Sec. 127. [Surveys.]**—It shall be the duty of the county surveyor to make all surveys within his county that he may be called upon to make.

**Sec. 128. [Books—Records.]**—The county commissioners of each county shall procure a suitable book for the use of, and which shall be kept by the county surveyor, and in which it shall be the duty of the county surveyor to truly record all surveys made by him, within twenty days after such surveys shall be made; and he shall, at the expiration of his term of office, deliver his said book to his successor in office, or to the county clerk of the proper county.

**Sec. 129. [Contents of record.]**—The record shall show the metes and bounds of all surveys made by the surveyor in his county, at whose request, and for whom the same were made, together with the names and oath of the chainmen employed, and shall be signed by the surveyor.

**Sec. 130. [Chainmen.]**—All necessary chainmen shall be employed by the person or persons causing the survey to be made. The chainmen shall be disinterested persons, and approved of and sworn by the surveyor to measure justly and exactly, to the best of their knowledge and ability, all lines measured by them.

**Sec. 131. [Monuments.]**—It shall be the duty of the county surveyor to establish suitable and proper bounds and monuments at each corner or angle in all surveys made by him, and when growing trees are convenient to such corner or angle, he shall mark two or more with a blaze and notch, facing the corner or angle, as witness trees to the same, and shall note the courses and distances of such witness trees from the corner, together with a description of the size and kind of tree.

#### FUNDING INDEBTEDNESS.

**Sec. 132. [Bonds may be issued.]**—The county board of any county in the state of Nebraska are hereby authorized and empowered to issue coupon bonds of such denominations as they may deem best, sufficient to pay the outstanding and unpaid warrants and indebtedness of such county; *Provided*, That the county board of any such county may limit the provisions of this subdivision to any fund or funds of said county; *Provided further*, That in no event shall bonds be issued to a greater amount than ten per cent. of the assessed valuation of such county; *And provided further*, That the county board shall first submit the question of issuing said bonds to a vote of the qualified electors of such county.

**Sec. 133. [Form of bonds.]**—Any bonds hereafter issued under the provisions of this subdivision shall be for the payment, by the county issuing the same, of the sum specified therein, made payable at the office of the county treasurer, and to run not more than twenty years, nor less than five years, with interest at a rate not to exceed seven per cent. per annum, payable semi-annually; said bonds and coupons shall be signed by the chairman of the board, and coun-

Sec. 125. A constable cannot appoint a deputy. 9 Neb. 90.

Sec. 132. This is a re-enactment of Laws 1877, 120, under which held not to authorize the levy of a sinking fund tax to pay floating indebtedness. 9 Neb. 453.

tersigned by the county clerk of the county; *Provided*, That such bonds may be made redeemable at any time after five years, at the option of the county board.

SEC. 134. [**Sale of bonds.**]—It shall be the duty of the county board of any county issuing bonds under the provisions of this subdivision to ascertain the highest price at which said bonds can be negotiated, and to embrace in the proposition submitted to the qualified electors under this act the minimum price at which said bonds shall be sold; *Provided*, That no bonds issued under the provisions of this subdivision shall be sold for less than eighty-five per cent. of their par value.

SEC. 135. [**Money realized from sales.**]—It shall be the duty of the board issuing bonds under the provisions of this subdivision to negotiate said bonds, and all the proceeds arising from the sale of said bonds shall be paid into the county treasury of said county, and shall be applied solely to the redemption and payment of the unpaid warrants and indebtedness of said county; *Provided*, That the county board of any county may exchange such bonds, at not less than their par value, for the outstanding indebtedness of such county; *Provided further*, That no bonds shall be issued, for the purposes of such exchange, for a less sum than fifty dollars.

SEC. 136. [**Payment of outstanding warrants.**]—Whenever said bonds are sold and the proceeds paid into the county treasury, it shall be the duty of the county treasurer to immediately notify the holders of all warrants, orders, certificates or audited accounts intended to be redeemed and paid under the provisions of this act, and the holders of such warrants, orders, certificates or audited accounts, dated prior to the issuing of said bonds, shall present the same for payment, and the said county treasurer shall pay the same out of the funds so provided, and said treasurer shall forthwith cancel said warrants, orders, certificates or audited accounts so presented and paid by writing across the face of each of them with red ink plainly and legibly the following words (properly filling the blanks): "Cancelled from warrant bond funds this \_\_\_\_\_ day of \_\_\_\_\_ 18—." (Signed) \_\_\_\_\_, Treasurer. " (Signed) \_\_\_\_\_, Holder."

SEC. 137. [**Record of bonds.**]—The treasurer of said county shall record in a book kept for that purpose, a statement of all the bonds issued, giving the number, amount, date, to whom issued; and shall also keep and record in said book a statement of all the warrants, orders, certificates and audited accounts so as aforesaid taken, giving their number, date, amount of principal and interest, if any, to whom issued, by whom presented for redemption, and as often as he may be called upon by the said board so to do, he shall present a statement thereof, and of all his doings in the premises, to the said county board.

SEC. 138. [**Tax for payment of bonds.**]—The county board of any county issuing bonds under the provisions of this subdivision shall levy a tax annually for the payment of the interest on said bonds as it becomes due; *Provided*, That an additional amount shall be levied and collected sufficient to pay the principal of such bonds at maturity; *And provided*, That not more than twenty per cent. of the principal of said bonds shall be levied and collected in any one year.

SEC. 139. [**Supervision of county board.**]—The board shall have power, and they are hereby directed so to do, to adopt such rules and regulations governing all officers and other persons in the payment, redemption, cancellation, and destruction of such warrants, orders, certificates and audited accounts, as they deem necessary and sufficient to protect the interests of said counties in furtherance of the provisions of this subdivision.

SEC. 140. [**Penalty—Fraudulent account.**]—If any person or officer, contrary to the provisions of this subdivision, shall knowingly issue or deliver, or put in circulation, use, or in any manner dispose of, contrary to law, any warrant, order, certificate, or audited account, intended to be redeemed or paid under the provisions of this subdivision, either before or after the same has been paid or cancelled, and thereby defraud, or attempt to defraud, any corporation, county, state or person, he shall, on conviction, be fined not less than five hundred dollars,

and be imprisoned in the penitentiary not less than six months nor more than three years.

**SEC. 141. [Penalty for non-performance of duty.]**—If any officer shall knowingly and wilfully fail to perform fully and completely each and every act or duty required of him by this subdivision, he shall, on conviction, be fined in any sum not less than fifty dollars, nor more than five hundred dollars, or be imprisoned not less than ten days, nor more than sixty days, or both fined and imprisoned at the discretion of the court.

#### PLATS.

**SEC. 142. [Irregular tracts of land.]**—It shall be the duty of the county board of each organized county in the state of Nebraska, to cause to be surveyed by a competent surveyor, all irregular subdivided tracts or lots of land, other than regular government subdivisions, and cause the same to be platted on a scale of not less than ten (10) inches to the mile; *Provided, however,* That where any county has in its possession the correct field notes of any such tract or lot of land, a new survey shall not be necessary, but such tracts may be mapped from such field notes.

**SEC. 143. [Maps.]**—The said board shall cause duplicate maps to be made, on which said tracts or lots of land shall be accurately described by lines, and numbered from one (1) up to the highest number of such tracts in each section, which numbers, together with the number of the section, town, and range, shall be distinctly marked on such maps. One of said maps shall be conspicuously hung in the office of the county clerk, and the other in the office of the county treasurer.

**SEC. 144. [Field notes—Records.]**—The said board shall also cause to be entered in duplicate, in suitable books to be provided for that purpose, the field notes of all such tracts of land within their respective counties, wherein shall be described each tract, according to survey, and each tract shall be therein numbered to correspond with its number on the maps. One of such books or field notes shall be filed in the office of the county clerk, and the other in the office of the county treasurer.

**SEC. 145. [Description of lots.]**—When the maps and books of field notes shall be filed as hereinbefore provided, the description of any tract or lot of land described in said maps, by number, section, town, and range, shall be a sufficient and legal description thereof, for revenue and all other purposes.

#### UNORGANIZED COUNTIES AND TERRITORY.

**SEC. 146. [Unorganized territory.]**—All counties which have not been organized in the manner provided by law, or any unorganized territory in the state, shall be attached to the nearest organized county directly east for election, judicial and revenue purposes; *Provided,* That Sioux county shall be attached to Cheyenne county for all the purposes provided for in this section; *Provided further,* That if no county lies directly east of any such unorganized territory or county, then such unorganized territory or county shall be attached to the county directly south, or if there be no such county, then to the county directly north, and if there be no county directly north, then to the county directly west of such unorganized territory or county.

**SEC. 147. [Effect of such attachment.]**—The county authorities to which any unorganized county or territory is attached, shall exercise control over, and their jurisdiction shall extend to such unorganized county or territory the same as if it were a part of their own county.

**SEC. 148. [When two counties directly east.]**—If two or more organized counties, or portions thereof, lie directly east of any unorganized county, then the portions of territory of such unorganized county, which lie either north or south of a line running directly west and in continuation of the boundary

line between such organized counties, shall be attached to the organized county directly east of such territory, for all purposes of this subdivision.

#### BOOKS AND STATIONERY.

**SEC. 149. [Stationery, printing, etc., when furnished by contract.]**—In all counties where the cost of furnishing the officers with books, blanks and stationery, shall exceed the sum of \$200 per year, the supplies for such purposes shall be let in separate contracts to the lowest competent bidder, who shall give bond for the faithful performance of his contract with at least two good and sufficient sureties, residents of the state. The bond required by this section shall be approved by the county board and the sureties therein shall justify in the same manner as sureties on official bonds.

**SEC. 150. [Estimates by county clerk.]**—It shall be the duty of the county clerk on or before the first day of December, annually, to prepare separate estimates of the books, and blanks, and stationery, required for the use of the county officers, during the coming year, and which by law are not required to be furnished by the state, and during the first week in December he shall publish a brief advertisement in one newspaper published in his county, stating the probable gross number of each item of books, blanks, and stationery required by such county during the year following the first day of January next ensuing, and inviting bids therefor, which bids shall be filed with said clerk on or before the said first day of January.

**SEC. 151. [Award of contract.]**—The county board shall, at their first meeting in January in each year, open said bids, and award the contract for the furnishing of all such books, blanks, and stationery as may be required by county officers, to the lowest bidder competent under the provisions of this subdivision, and who complies with all its provisions; *Provided*, That the county board may reject any or all bids.

**SEC. 152. [Accounts, how paid.]**—The accounts for books, blanks, and stationery furnished under said contract shall be audited and paid as other accounts against the county, and no county board or other county officer shall procure any such books, blanks, and stationery from any person other than the contractor or his assignee, during the existence of such contract, and no account therefor shall be paid by the county.

**SEC. 153. [Repealed act of 1873, G. S. 232; Secs. 1-6, chap. 5, R. S. 27; chap. 8, R. S. 32; chap. 50, R. S. 376; chap. 51, R. S. 378; act of 1873, G. S. 248; Laws 1877, 169, 219; chap. 10, R. S. 45; and all acts inconsistent with its provisions.]**

**SEC. 154. [Provided for act to take effect Sept. 1, 1879.]**

#### ARTICLE II.—REMOVAL FROM OFFICE.

**SECTION 1. [Causes for removal.]**—All county officers, including justices of the peace, may be charged, tried, and removed from office for official misdemeanors in the manner and for the causes following: *First*. For habitual or wilful neglect of duty. *Second*. For gross partiality. *Third*. For oppression. *Fourth*. For extortion. *Fifth*. For corruption. *Sixth*. For wilful mal-administration in office. *Seventh*. For conviction of a felony. *Eighth*. For habitual drunkenness.

**SEC. 2. [Charges.]**—Any person may make such charge, and the board of commissioners shall have exclusive original jurisdiction thereof by a summons.

**SEC. 3. [Mode of procedure.]**—The proceeding shall be as nearly like those in other actions as the nature of the case admits, excepting where otherwise provided in this chapter.

**SEC. 4. [Complaint, how brought.]**—The complaint shall be by an accuser against the accused, and shall contain the charges with the necessary

**ART. II. Chap. 45, G. S. 250.**

**SEC. 1.** Two members of the board have no authority to try a case under this act. The entire board must act. County commissioners are themselves excepted. 5 Neb. 404. Proceedings to remove county treasurer (sec. 94, p. 188,) must be conducted under the provisions of this subdivision. 10 Neb. 463.

specifications under them, and be verified by the affidavit of any elector of the state that he believes the charges to be true.

**SEC. 5. [Copy of complaint].**—It will be sufficient that the summons require the accused to appear and answer the complaint of A. B. (naming the accuser) for "official misdemeanors;" but a copy of the complaint must be served with the summons.

**SEC. 6. [Pleadings].**—No answer or other pleading, after the complaint, is necessary, but the defendant may move to reject the complaint or demur thereto, upon any ground rendering such motion or demurrer proper; and, he may answer if he desires, and if he answer, the accuser may reply or not. But, if there be an answer and reply, the provisions of this statute relating to pleadings in actions shall apply.

**SEC. 7. [Judgment of removal].**—The questions of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office, and declaring the latter vacant, and the clerk shall enter a copy of the judgment in the election book.

**SEC. 8. [Costs].**—The accuser and the accused are liable to costs as in other actions.

**SEC. 9. [Vacancy].**—When the accused is an officer of the court, and is suspended, the court may supply his place by appointment for the term.

#### ARTICLE III.—MISCELLANEOUS ACTS AND PROVISIONS.

**SECTION 1. [Bonds for coal].**—The board of county commissioners of each county in this state are hereby authorized and required to submit to the legal voters thereof, on presentation of a petition of twenty resident freeholders of said county, the proposition to issue bonds, not exceeding twenty thousand dollars, the proceeds of which shall be applied to defray the expenses of boring and prospecting for coal in their respective counties under the direction of the commissioners thereof, and said boards are hereby authorized to issue the said bonds for said purpose, in case the vote shall be favorable to the proposition; *Provided, however,* That said commissioners may, in their discretion, refuse to submit such inquiry to a vote of the people until the next general election after the presentation of such petition. [G. S. § 1, 249.]

**SEC. 2. [Law governing].**—The act entitled "An act to enable counties, cities and precincts to borrow money upon their bonds, or to issue bonds to aid in the construction or completion of works of internal improvement in this state, and to legalize bonds already issued for such purpose," approved February 15, 1869, so far as applicable, shall govern the proceedings to submit said proposition, issue said bonds and provide for payment of the same. *Provided,* This act shall not apply to the counties of Burt, Washington and Sarpy. [Id. § 2.]

**SEC. 3. [Fees in criminal cases].**—That the board of county commissioners of the several counties in this state are hereby authorized to audit and allow the fees that may be fixed by law for services that may hereafter be performed by justices of the peace, constables and sheriffs in their respective counties, in the arrest and examination of offenders charged with felony, or misdemeanor. [1871 § 1, 193. G. S. 250.]

**SEC. 4. [Transfer of sinking to general fund].**—That the board of county commissioners of the several counties of the state, may appropriate to the county general fund any county sinking fund in the county treasury not levied for the payment of any bonded indebtedness; also any county moneys from whatever source, excepting the moneys levied for school purposes, that remain on hand in the county treasury, and are no longer required for the purposes for which the same were levied. [1877 § 1, 214.]

**SECS. 1-2.** "An act to authorize counties to issue bonds to aid in boring for coal in their respective counties." G. S. 249. Took effect March 3, 1873.

**SEC. 3.** "An act to provide for paying officers for services rendered in cases of felony." Laws 1871, 133. As amended 1873. G. S. 250. The words "or misdemeanor," at end of section are unconstitutional. 10 Neb. 299.

**SEC. 4.** "An act to transfer surplus county sinking and other funds to the county general fund." Laws 1877, 214. Took effect June 1, 1877.

**SEC. 5. [Removal of nitro glycerine and explosive material].**—The board of county commissioners of each organized county shall have the power to abate or remove any deposit of nitro glycerine, explosive oils, gun powder, or other dangerous explosive or inflammable material which is so deposited or situated that if ignited, it would, in their opinion, endanger the life, or buildings, or property of any person; and to cause, by the order of said board, that the owner or owners of such material remove the same; and in case the owner or owners of such material, or the person or persons having charge of the same do not remove the same to some place designated or agreed to by said board, within ten days after personal service of such notice to remove the same, each and every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding one hundred dollars, nor less than twenty-five dollars. [1879 § 1, 66.]

**SEC. 6. [Publications in foreign language].**—That in counties in this state where a newspaper is published in the German, Swedish and Bohemian languages, and the said newspaper has regular daily, tri-weekly, weekly circulation of fifteen hundred copies or more, and it shall be proven by the affidavit of the publisher or foreman thereof to the board of county commissioners in said county that the said paper has such a circulation, it shall be the duty of the county commissioners in said county to have published in said newspaper a report of all the proceedings of said board of county commissioners at each meeting; said report to be prepared by the clerk of said county and delivered to the publisher of said paper, or left at the office of said paper within two days after each meeting of said board of county commissioners. All advertisements of lands offered for sale by the county treasurer of said county shall be delivered to the publisher of said German, Swedish and Bohemian papers, or left at the office of said paper for publication on the same day when the said advertisement shall be inserted in any paper or papers printed in the English language and published in said county. [1879 § 1, 179.]

**SEC. 7. [Rate].**—The rate charged for said publication of said reports, notices, and advertisements mentioned in section one of this act shall be the same in said papers printed in the German language as is provided by law to be paid for legal advertisements in papers in this state printed in the English language. [Id. § 2.]

**SEC. 8. [Selection of papers].**—If any counties in this state shall contain two or more papers printed in the German language, and the majority of the county commissioners shall be satisfied upon proper proof that two or more of said papers have an actual and regular circulation of fifteen hundred copies or more, then it shall be the duty of the board of commissioners at their first meeting in January of each year, to elect by ballot the German paper published in said county, which shall publish the reports, notices, and advertisements as aforesaid, during the year next ensuing after said meeting. [Id. § 3.]

**SEC. 9. [Purchase of real estate].**—That the county board shall have power to acquire, take, hold, and appropriate so much real estate as shall be necessary and convenient for the use of the county, to construct county buildings. *Provided*, That no appropriation of private property for the use of the county aforesaid shall be made until full and just compensation therefor be first made to the owner thereof. [1879 § 1, 184.]

**SEC. 10. [Damages].**—The damages to be paid by a county for any real estate taken as aforesaid, when not agreed upon, shall be ascertained and determined by commissioners to be appointed by the county judge of said county as hereinafter provided. [Id. § 2.]

**SEC. 5.** "An act to confer upon boards of county commissioners power to cause the removal of explosive and dangerous material." Laws 1879, 66. Took effect June 1, 1879.

**SECS. 6-8.** "An act authorizing boards of county commissioners to publish certain proceedings and notices in German newspapers." Laws 1879, 179.

**SECS. 9-14.** "An act to authorize counties to acquire real estate to build thereon county buildings and provide compensation therefor." Laws 1879, 184. Took effect June 1, 1879.



**SEC. 11. [Assessment of damages—Appeal.]**—In the event that damage cannot be agreed upon, the county judge of the county seeking to appropriate such real estate shall, upon application of the county board, or the owner of the real estate, direct the sheriff of said county to summon six disinterested freeholders of said county, to be selected by said judge and not interested in a like question, unless a smaller number is agreed upon by said parties, whose duty shall be to inspect said real estate and assess the damages which said owner will sustain by the appropriation of his land to the county as aforesaid, and make report in writing to the county judge of said county, who after certifying the same under his seal of office, shall transmit the same to the county clerk of said county for record, and the said county clerk shall file, record, and index the same in the same manner as is provided for the record of pleads [deeds] in this state, and such record shall have the like force and effect as the record of deeds in pursuance of the statute in such case made and provided; and if said county board shall at any time before they enter upon said real estate for the purpose of constructing said county buildings, pay to said county judge for the use of said owner the same [sum] so assessed and returned as aforesaid, they shall thereby be authorized to construct and maintain their county buildings upon said premises; *Provided*, That either party may have the right to appeal from such assessment of damages to the district court of said county in which such land is situated, within sixty days after said assessment be filed with said county judge, and in case of such appeal the decision and finding of the district court shall be transmitted to [by] the clerk thereof, duly certified, to the county clerk to be filed and recorded as hereinbefore provided in his office. But such appeal shall not delay the prosecution of the work on said county buildings, if such county commissioners shall first pay or deposit with said county judge the amount so assessed by said freeholders, and in no case shall said county board be liable for the costs on such appeal unless the owners of such real estate shall be adjudged entitled upon the appeal to a greater amount of damages than was awarded by said freeholders. The county board shall in all cases pay the cost of the first assessment; *Provided*, That either party may appeal from the decision of the district court to the supreme court of the state, and the money so deposited shall remain in the hands of the county judge until a final decision be had subject to the order of the supreme court. [Id. § 8.]

**SEC. 12. [Vacancy—Oath—Compensation.]**—In case of the death, absence, refusal, or neglect of any of said freeholders to act as commissioners, it shall be the duty of the sheriff of said county to fill vacancies by forthwith summoning disinterested freeholders of the county to act as such commissioners. Said freeholders before entering upon the discharge of their duties shall take and subscribe an oath honestly and truly to assess the damages which such owner or owners shall sustain by the appropriation of his lands to the county, which said oath shall be filed in the office of said county judge. Said appraisers shall each receive two dollars per day for their services, and the same shall be taxed in the bill of costs. [Id. § 4.]

**SEC. 13. [Notice to non-residents.]**—If upon the selection of a site for county buildings it shall be found necessary to acquire and appropriate the lands of any non-resident owner, the said county board shall give four weeks notice to such owner, if known, and if not known, by description of such real estate by publication four consecutive weeks in some newspaper published in the county where such land is situated, or if none is published therein, then such notice shall be published for the same time in some newspaper of general circulation in such county, that the county board of such county have selected a site for the construction of county buildings, which site includes his or her lands, and that the same will be taken and appropriated for the purpose of the construction of county buildings, and if such owner shall not within thirty days thereafter apply to said county judge to have the damages assessed in the mode hereinbefore prescribed, said county board may proceed, as herein set forth, to have the damages assessed, subject to the same right of appeal as in case of resident owners, and upon the

payment of the damages assessed to the county judge for such owner the county board shall acquire all right and privileges mentioned in this act. [Id. § 5.]

**SEC. 14. [Act cumulative.]**—This act shall in no way affect the power of the county board now possessed by law to purchase a site for the construction of county buildings, but is cumulative. [Id. § 6.]

**SEC. 15. [Coroner act as sheriff.]**—Every coroner shall serve and execute process of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party to the case, or whenever affidavits shall be made and filed as provided in the succeeding section, and in all such cases he shall exercise the same powers, and proceed in the same manner as prescribed for the sheriff in the performance of similar duties. [1881 § 1, chap. 42.]

**SEC. 16. [Process directed to coroner.]**—Whenever any party, his agent or attorney shall make and file with the clerk of the proper court an affidavit stating that he believes the sheriff of such county will not, by reason of either partiality, prejudice, consanguinity, or interest, faithfully perform his duties in any suit commenced, or about to be commenced, in said court, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might or ought to have done, and if like objection shall be made to the coroner by either party, the court shall appoint some suitable person to whom such objection does not apply. [Id. § 2.]

## CHAPTER 19.—COURTS—SUPREME AND DISTRICT.

### COURT OF IMPEACHMENT.

**SECTION 1. [Impeachments.]**—All impeachments of state officers shall be tried before the supreme court, except the impeachment of any judge of said court, and the impeachment of a judge of the supreme court shall be tried before all the district judges of the state. [1879, 82.]

**SEC. 2. [Powers.]**—A court of impeachment shall have power to proceed with a trial only when two-thirds of all the members thereof are in attendance, but any less number shall have power to adjourn to any reasonable time.

**SEC. 3. [Rules.]**—A court of impeachment shall make such rules and orders as in its discretion shall be best adapted to a full, fair and impartial investigation of the charges made and to the promotion of substantial justice.

**SEC. 4. [Clerk and reporter.]**—The clerk of the supreme court shall act as the clerk of the court of impeachment, and the court may appoint a short-hand reporter, and such officers shall each receive such an allowance as the court of impeachment may authorize to be by them reported for the consideration of the legislature at its next session.

**SEC. 5. [Order of business.]**—Whenever the court of impeachment in any way interferes with the business of any other court or county of the state, that of the court of impeachment shall take precedence.

**SEC. 6. [Presiding judge.]**—When the court of impeachment is composed of the district judges of the state they shall elect one of their number to act as the presiding judge of said court; in all other cases the chief justice shall preside, and the clerk of said court shall keep a full record of each days proceedings, in a book to be specially provided for that purpose, and of which book the clerk of the supreme court shall always be the custodian, and each days proceedings shall be signed by the judge presiding.

**SEC. 7. [Opinions.]**—The written opinions of any court of impeachment shall be reported in the volume of supreme court reports issued after the adjournments of said court.

**SEC. 8. [How tried.]**—An impeachment of any state officer shall be tried, notwithstanding such officer may have resigned his office, or his term of office has expired; and if the accused person be found guilty, judgment of removal from

office, or disqualifying such officer from holding or enjoying any office of honor, profit, or trust in the state, or both, may be rendered as in other cases.

SEC. 9. [Same.]—An impeachment against any state officer shall be tried, and judgment of removal from office, or of disqualification to hold office, may be rendered, notwithstanding the offense for which said officer is tried occurred during a term of office immediately preceding.

#### SUPREME COURT.

SEC. 10. [How constituted.]—The supreme court shall consist of three judges, a majority of whom shall be necessary to constitute a quorum or pronounce a decision.

SEC. 11. [Chief justice.]—The judge of the supreme court having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and as such shall preside at all terms of the supreme court; and in case of his absence, the judge having in like manner the next shortest term to serve, shall preside in his stead.

SEC. 12. [Eligibility.]—No person shall be eligible to the office of judge of the supreme court unless he be at least thirty years of age and a citizen of the United States; nor unless he shall have resided in this state at least three years next preceding his election; nor unless he shall have been regularly admitted as an attorney in this state, and remained as an attorney in good standing at the bar thereof.

SEC. 13. [Jurisdiction.]—The supreme court shall have original jurisdiction in cases relating to the revenue, civil cases in which the state shall be a party, mandamus, quo warranto, and habeas corpus, and shall have appellate and final jurisdiction of all matters of appeal and proceedings in error which may be taken from the judgments or decrees of the district courts, in all matters of law, fact or equity, where the rules of law or the principles of equity appears from the files, exhibits, or records of said court to have been erroneously determined. [Const., Art. VI. § 2.]

SEC. 14. [Terms.]—Terms of the supreme court shall be held at the capital, beginning on the first Tuesday in January and July of each year.

SEC. 15. [Special terms.]—The judges of the supreme court, or a majority of them, are hereby authorized to appoint and hold a special term of said court, at such time as they may designate, for disposing of the unfinished business of any general term of said court, and may appoint one special term of said court in any one year for general or special purposes.

SEC. 16. [Quorum.]—If a quorum is not in attendance on the first day of any term, the fact shall be entered on the journal by the clerk, and the court shall stand adjourned until the next day, and a like proceeding shall be had, from day to day, until the fourth day, and should there still be no quorum, the court will stand adjourned until the next term in course. No proceedings shall in any manner be affected by such adjournment, or failure to hold a court, but shall stand continued to the next term.

SEC. 17. [Reporter.]—The reporter of the supreme court, who under the provisions of section 8, article VI of the constitution, acts as clerk thereof, shall keep his office at the capital, shall be the custodian of the seal of said court, perform the duties devolving upon him by law and be subject to the orders of the court. He shall receive an annual salary of \$1,500, payable as the salary of other state officers is paid.

SEC. 18. [Opinions.]—The opinions of the court on all questions brought before them, as well as such motions, collateral questions, and points of practice, as they may think of sufficient importance, shall be reduced to writing, filed with and recorded by the clerk of the court. All dissenting opinions must be written, filed and recorded in the same manner.

SEC. 13. A judgment rendered in an action at law cannot be brought by appeal to the supreme court and there tried *de novo*. 2 Neb. 17. As to proceedings in exercise of original jurisdiction see Chap. 71.

**SEC. 19. [Duties of reporter.]**—It shall be the duty of the reporter of the supreme court to prepare the opinions of said court for publication as fast as they are delivered to him, and when sufficient material is accumulated to form a volume of not less than six hundred pages, he shall cause the same to be printed, stereotyped, and bound in a good and substantial manner, equal to volume four of said reports. He shall deliver one thousand copies of each volume, with the stereotyped plates thereof, to the auditor of public accounts, who shall draw his warrant in payment thereof, at the rate of two dollars and twenty-five cents (\$2.25) per volume. The copyright of each volume shall be entered by said reporter for the benefit of the state, and all papers relating thereto shall be filed and recorded in the office of the secretary of state. The title of said volume shall be "Nebraska Reports," which, with the number of the volume, shall be printed on the back of each volume, and the reports of every case must show whether either, and if so which, judge dissented from the decision therein.

**SEC. 20. [Reports to be sold.]**—The supreme court reports shall be deposited in the state library. Copies thereof shall be distributed to each judge of the supreme, district, and county court, to each state and territorial library, to each officer of the executive department of this state, and to each judge of the United States district and circuit courts of this state; and to the library of congress, two copies. The reporter shall be permitted to distribute such a number of copies as he sees fit, not exceeding ten of each volume, for notice in law periodicals published in the United States. The balance of said reports shall be sold as called for at the rate of \$2.50 per volume. The money arising from such sales shall be paid into the treasury and constitute a library fund to be expended in the purchase of books for the benefit of the library. The accounts for such purchases shall be audited and paid as other accounts against the state are audited and paid, warrants therefor to be drawn on the library fund. Exchanges of said volumes may also be made with book publishers for books of equal value to the amount of said exchanges at the rate per volume hereinbefore provided for.

**SEC. 21. [Additional volumes.]**—Whenever the edition of any volume of reports, the copyright and plates of which are owned by the state, shall become exhausted, it shall be the duty of the reporter to cause to be printed from the stereotyped plates of such volume and bound in uniform style with the first edition thereof, five hundred additional volumes, to be sold as herein provided. Upon the delivery of such subsequent edition the auditor of public accounts shall draw his warrants on the treasury in payment thereof at the rate of \$1.25 per volume.

**SEC. 22. [Bailiffs.]**—The court may also appoint not exceeding two bailiffs, who shall receive the compensation allowed by law, to be paid as other claims upon the state treasury are paid, upon a certificate of the clerk of the supreme court stating the number of days of service rendered by said bailiffs. Such bailiffs shall have power to serve any process issuing out of said court in the exercise of its original jurisdiction, and shall receive the same fees as sheriffs for similar services.

#### DISTRICT COURTS.

**SEC. 23. [Eligibility of district judge.]**—No person shall be eligible to the office of district judge in any of said districts unless he is also eligible to the office of supreme judge.

**SEC. 24. [Jurisdiction.]**—The district courts shall have and exercise general, original and appellate jurisdiction in all matters, both civil and criminal, except where otherwise provided. [Const., Art. VI. § 9.]

**SEC. 25. [Special term.]**—A special term may be ordered and held by the district judge in any county in his district, for the transaction of any business, if he deem it necessary. In ordering a special term he shall direct whether a grand or petit jury, or both, shall be summoned.

**SEC. 24.** 4 Neb. 94. **SEC. 25.** A judge in calling a term cannot direct the sheriff to summon jurors. He must direct whether juries shall be summoned, and such juries must be drawn as for regular terms of court. 9 Neb. 163. Having statutory authority to call a special term, a recital in the call that the judge called the same in pursuance to the constitution does not render the order void. Id.

**SEC. 26. [Judges may interchange.]**—The district judges may interchange, and hold each other's courts; and whenever it shall appear by affidavit, to the satisfaction of any district judge in the state, that the judge of any other district is unable to act, on account of sickness, interest, or absence from the district, or from any other cause, the judge to whom application may be made shall have power to make any order, or do any act relative to any suit, judicial matter, or proceeding, or to any special matter arising within the district where such vacancy or disability exists, which the judge of such district court could make or do; and the order or act shall have the same effect as if made or done by the judge of such district.

**SEC. 27. [Record of proceedings.]**—The clerk of each district court shall keep a record of the proceedings of the court, under the direction of the judge. He shall, if the business of the court does not prevent, make up the record of each days proceedings before the opening of court on the next day, and the first business of each day, after the first, shall be read in open court, and if found correct shall be signed in open court by the judge. The proceedings, including those of the last day of the session, shall be made up and signed by the judge before the final order of adjournment is made.

**SEC. 28. [Rule to inferior tribunal.]**—The district court may, by rule, compel an inferior court or board to allow an appeal, or to make or amend records according to law, either by correcting an evident mistake or supplying an evident omission.

**SEC. 29. [Absence of judge.]**—If the judge does not appear on the day appointed for holding the court, the clerk shall make an entry thereof in his record, and adjourn the court until the next day, and so on until the fourth day, unless the judge appear.

**SEC. 30. [Adjournment.]**—If the judge does not appear by five o'clock in the afternoon of the fourth day, the court shall stand adjourned till the next regular term.

**SEC. 31. [Same.]**—If the judge is sick, or for any other sufficient cause is unable to attend court at the regularly appointed time, he may, by a written order, direct an adjournment to a particular day therein specified, and the clerk shall, on the first day of the term, or as soon thereafter as he receive the order, adjourn the court as therein directed.

**SEC. 32. [Proceedings not affected.]**—No recognizance, or other instrument or proceeding, shall be rendered invalid by reason of there being a failure of the term, but all proceedings pending in court shall be continued to the next regular or special term, unless an adjournment be made as authorized in the last preceding section.

**SEC. 33. [Persons recognized.]**—In case of such continuances or adjournments, persons recognized or bound to appear at the regular term, which has failed as aforesaid, shall be held bound, in like manner, to appear at the time so fixed, and their sureties (if any) shall be liable, in case of their non-appearance, in the same manner as though the term had been held at the regular time, and they had failed to make their appearance thereat.

**SEC. 34. [Final adjournment.]**—Upon any final adjournment of the court all business, not otherwise disposed of, shall stand continued generally.

**SEC. 35. [Proceedings to be public.]**—All judicial proceedings must be public, unless otherwise specially provided by statute.

**SEC. 36. [Who to administer oaths.]**—All courts have power to administer oaths connected with any matter pending before them, either by any judge, justice or clerk thereof, or by any other person appointed for that purpose by them.

**SEC. 26.** A district judge may grant a temporary order of injunction out of his own district, only when it is shown that the judge of the other district is under the disability provided for in this section. 7 Neb. 386.

**SEC. 27.** 2 Neb. 66. 7 Id. 331. 9 Id. 220, 400.

**SEC. 31.** The reasons for an adjournment under this section are not subject to review by the supreme court. 4 Neb. 285. When the record shows that a written order of adjournment is entered on the journal, but it does not appear that the clerk formally adjourned the court, it will be presumed that he performed that duty. Id.

**SEC. 37. [Cases in which judge is disqualified.]**—A judge or justice is disqualified from acting as such, except by mutual consent of parties, in any case wherein he is a party, or interested, or where he is related to either party by consanguinity or affinity within the fourth degree, or where he has been attorney for either party in the action or proceeding, and such mutual consent must be in writing and made a part of the record.

**SEC. 38. [Business on Sunday.]**—No court can be opened, nor can any judicial business be transacted, on Sunday, or on any legal holiday, except—  
I. To give instructions to a jury then deliberating on their verdict. II. To receive a verdict, or discharge a jury. III. To exercise the powers of a single magistrate in a criminal proceeding.

**SEC. 39. [Jurisdiction at chambers.]**—A judge of the district court may sit at chambers anywhere within his district for the purpose of,—1. Granting, dissolving, or modifying temporary injunctions. 2. Confirming judicial sales. 3. Discharging attachments. 4. Hearing proceedings in "aid of execution." 5. Hearing application for sale of personal property held under attachment. 6. Hearing application for the appointment of a receiver or to discharge one already appointed, or to modify the order appointing one. 7. Hearing an application for additional security. 8. Hearing an application for mandamus or habeas corpus. 9. To discharge such other duties or to exercise such other powers as may be conferred upon a judge in contradistinction to a court. 10. For the purpose of receiving a plea of "guilty" from any person charged with a felony, and passing sentence thereon, upon reasonable notice to the prosecuting attorney.

**SEC. 40. [Same.]**—In hearing any matters mentioned in subdivisions 2, 3, 4, 5 and 7, of the preceding section, the same shall be had in the county where the action is pending or the property is situated.

**SEC. 41. [Court commissioner.]**—The judge of each judicial district shall appoint some suitable person in each county of his district as a court commissioner, who shall hold his office during the pleasure of such judge. Such commissioner must be an attorney at law in good standing, and must have been engaged in practice as such attorney at least five years, and have practiced in this state at least two years. He shall, before entering upon the duties of his office, give a bond and take the oath of office required by law to be given and taken by county judges; and shall receive the same fees for like services. He shall perform such duties and exercise such powers as are imposed or conferred upon him by the laws of the state.

**SEC. 42. [Terms of court.]**—The judges of the district court shall, on the first day of January of each year, fix the time of holding terms of court in the counties composing their respective districts, during the ensuing year, and cause the same to be published throughout the district, if the same can be done without expense. The clerk of each district court shall note on the bar docket of each term the time so fixed for holding court in his county. The terms shall be so fixed as not to conflict with the time fixed by rules of the supreme court for the hearing of causes therein from said district. The clerk of the supreme court shall, before the first day of January of each year, notify each district judge of the times fixed by the supreme court for the hearing of causes from his district. All terms of the district court shall be held at the county seat in the court house, or other place provided by the county board.

**SEC. 43. [Deputy clerks.]**—The clerk of the supreme court, and of the several district courts in this state, shall have power to appoint deputies; and deputies of the district clerks, shall be residents of the counties in and for which they act. Such deputies shall be sworn faithfully to perform the duties of their office, before they enter upon those duties.

**SEC. 44. [Clerks liable for official acts of deputies.]**—Every clerk

SEC. 39. The judges have no jurisdiction under this section to issue writs of mandamus in vacation. 10 N.b. 476. But see sec. 55.

appointing a deputy under the provisions of this chapter, shall be liable for all the official acts of said deputy clerk.

**SEC. 45. [Short-hand reporter.]**—There shall be appointed within and for each of the judicial districts of this state by the district judge, a stenographic reporter who shall be well skilled in the art of stenography, and capable of reporting the oral proceedings, had in court, verbatim.

**SEC. 46. [Oath and salary.]**—The said reporter shall take the oath required to be taken by judicial officers, shall hold his office during the pleasure of the district judge, and receive an annual salary of \$1,500, to be paid by the state as the salary of other officers is paid.

**SEC. 47. [Duties.]**—The said reporter shall attend all terms of the district court held within and for the district for which he is appointed, and shall make a stenographic report of all oral proceedings had in such court, including the testimony of witnesses, with the questions to them, verbatim, and any further proceedings or matter when directed by the presiding judge so to do; but the parties may, with the consent of the judge, waive the recording by such reporter of any part of the proceedings herein required to be taken;—this shall not include arguments to the jury. And whenever during the progress of the cause, any question arises as to the admissibility or rejection of evidence or any other matter causing an argument to the court, such argument shall not be recorded by the reporter, but he shall briefly note the objection made and the ruling of the court thereon, and any exceptions taken by either party to such ruling.

**SEC. 48. [Office.]**—The said reporter shall keep and maintain an office within the district for which he shall be appointed, and shall keep and preserve in his said office all stenographic reports made by him as in this subdivision required. Such records shall be the property of the state, and upon the termination of his office the said reporter shall deliver the same to his successor in office.

**SEC. 49. [Duties.]**—It shall be the duty of such reporter to furnish, on the application of the district attorney or any party to a suit in which a stenographic record of proceedings has been made, a long-hand copy of the proceedings so recorded, or any part thereof, for which he shall be entitled to receive, in addition to his salary, a fee of five cents per hundred words, to be paid by the party requesting the same, except where such copy is required by the district attorney on the part of the state, in which case the reporter shall furnish such copy without the payment of any fee; *Provided also*, That in all criminal cases, wherein after conviction, the defendant shall make an affidavit that he is unable, by reason of his poverty, to pay for such copy, the court or judge thereof may, by order indorsed on such affidavit, direct the reporter to make such copy without the payment of any fee. It shall be the duty of the reporter to deliver such long-hand copy of the proceedings therein, within forty days from the final adjournment of the term at which the judgment is rendered, to the party demanding it.

**SEC. 50. [Repealed Chap. 13 R. S. 48; Laws 1877, 116, 205 and all acts inconsistent with provisions of this act, except Laws 1875, 76.]**

**SEC. 51. [Provided for act to take effect March 1, 1879.]**

#### INSTRUCTIONS TO JURIES.

**SEC. 52. [To be in writing.]**—It shall be the duty of the judges of the several district courts, in all cases, both civil and criminal, to reduce their charge or instructions to the jury to writing, before giving the same to the jury, unless the so giving of the same is waived by the counsel in the case in open court, and so entered in the record of said case; and either party may request instructions

SEC. 49. The proviso was not in the original section (1877, 150), and it was held that even one convicted of a felony must pay for a transcript if required by the reporter, notwithstanding the bill of rights (sec. 23), which says that: "the writ of error shall be a writ of right in all cases of felony." 8 Neb. 23. If a party is deprived of the transcript by fault of the reporter so that he is thereby deprived of his bill of exceptions the court will in a proper case grant him a new trial. 10 Neb. 451.

SECS. 52-56. "An act to amend section 58, chapter fourteen, General Statutes." Laws 1875, 76. Took effect April 1, 1875. See sec. 50. See also note to sec. 283, civil code.

to the jury on points of law, which shall be given or refused by the court. All instructions asked shall be in writing. [1875 § 1, 76.]

SEC. 53. [**Modifications.**—] If the court refuse a written instruction as demanded, but give the same with a modification, which the court may do, such modification shall not be by interlineation or erasure, but shall be well defined, and shall follow some such characterizing words as "changed thus," which words shall themselves indicate that the same was refused as demanded. [Id. § 2.]

SEC. 54. [**Instructions read over.**—] The court must read over all the instructions which it intends to give, and none others, to the jury, and must announce them as given, and shall announce as refused, without reading to the jury, all those which are refused, and must write the words "given" or "refused," as the case may be, on the margin of each instruction. [Id. § 3.]

SEC. 55. [**To be numbered.**—] If the giving or refusal be excepted to, the same may be without any stated reason therefor, and all instructions demanded, as well as all instructions given to the jury by the court on its own motion, must be plainly and legibly written in consecutively numbered paragraphs, and filed by the clerk before being read to the jury by the court; and such instructions shall be preserved as part of the record of the cause in which they were given. [Id. § 4.]

SEC. 56. [**Oral explanation.**—] No oral explanation of any instruction authorized by the preceding sections shall, in any case, be allowed, and any instruction or charge, or any portion of a charge or instructions given to the jury by the court and not reduced to writing as aforesaid, or a neglect or refusal on the part of the court to perform any duty enjoined by the preceding sections, shall be error in the trial of the case, and sufficient cause for the reversal of the judgment rendered therein. [Id. § 5.]

SEC. 57. [**Jurisdiction at chambers.**—] That any judge of the district court may sit at chambers, at any time and place within his judicial district, and while so sitting shall have the power—1. To grant, dissolve or modify temporary injunctions. 2. To discharge attachments. 3. To hear and determine application for writ of mandamus, and applications for writ of habeas corpus. 4. To discharge such other duties, or to exercise such other powers, as may be conferred upon a judge in contradistinction to a court. 5. To receive a plea of "guilty" from any person charged with a felony and passing sentence thereon, upon reasonable notice to the prosecuting attorney. [1881 § 1, chap. 46.]

## CHAPTER 20.—COURTS—PROBATE (COUNTY). \*

SECTION 1. [**Court.**—] That there is hereby established, in each organized county in this state, a probate court which shall be held at the county seat by the probate judge of such county, and shall be a court of record. Such court shall be deemed to be always open, and any cause, matter or proceeding may be proceeded with therein at any time after the giving of notice or service of process in the mode prescribed by law. And the proceedings and determinations of such court heretofore had or made in any cause, matter or proceeding, at any time other than at a regular term of such court, as heretofore prescribed by law, shall be as

\*Secs. 1-37. "An act concerning the organization, forms, and jurisdiction of probate courts." G. S. 263. Took effect Mar. 3, 1873. By Const., Art. XVI, sec. 15, county courts are made the successors of probate courts. 9 Neb. 265.

SEC. 54. When instructions are requested which are substantially the same as those already given it is not error to refuse them. And under this section it is not error for the court to fail to give the reason for such refusal. 7 Neb. 344.

SEC. 55. The right given by this section will be regarded as waived, when the charge is not excepted to or when exception is taken to a particular clause only. 4 Neb. 288. But in case of felony if it appear that the charge had a tendency to prejudice the accused under any state of facts, a new trial will be granted although no exception is taken. 4 Neb. 530. 9 Neb. 302.

SEC. 56. Although an oral charge be given, the supreme court will not consider it "error in the trial of the case" unless the attention of the court below has been called to it in the motion for a new trial. 4 Neb. 43. And a neglect to mark instructions as provided in sec. 52 must also be excepted to at the time and attention of court called thereto in motion for new trial or the error will be waived. 10 Neb. 443.

SEC. 57. "An act to give the several judges of the judicial districts of Nebraska, certain powers when sitting in chambers anywhere within their respective judicial districts." Approved March 2. Took effect June 1, 1881.



valid and effectual, for all purposes, as if had or made at such regular term. [G. S. § 1, 263.]

**SEC. 2. [Jurisdiction.]**—Probate judges in their respective counties shall have and exercise the ordinary powers and jurisdiction of a justice of the peace, and shall, in civil cases, have concurrent jurisdiction with the district court in all civil cases in any sum not exceeding five hundred dollars, exclusive of costs, and in actions of replevin where the appraised value of the property does not exceed that sum, and the provisions of the code of civil procedure, relative to justices of the peace, shall, where no special provision is made by this subdivision, apply to the proceedings in all civil actions prosecuted before said probate judges; *Provided*, That probate courts shall not have jurisdiction: I. In any action for malicious prosecution. II. In any action against officers for misconduct in office, except where like proceeding can be had before justices of the peace. III. In actions for slander and libel. IV. In actions upon contracts for the sale of real estate. V. In any matter wherein the title or boundaries of land may be in dispute, nor to order or decree the sale or partition or [of] real estate. [Const., Art. VI. § 16.]

**SEC. 3. [Original jurisdiction.]**—The courts of probate in their respective counties, shall have exclusive jurisdiction of the probate of wills, the administration of estates of deceased persons, and the guardianship of minors, insane persons, and idiots; *Provided*, No judge of probate shall act in any case or matter where he is next of kin to the deceased, nor where he is legatee or devisee under a will, nor where he is named as executor or trustee in a will, or is one of the subscribing witnesses thereto, nor where he is related to any party in interest, in any case before him, by consanguinity or affinity, or has such an interest therein as would exclude him from acting as a juror in such case or matter, nor where he has acted as attorney or counsel in any case or matter before him.

**SEC. 4. [Powers.]**—They shall have power: I. To hear and determine claims and set-offs in the matter of estates of deceased persons. II. To hear and determine questions of application for, and to grant and issue letters of administration, testamentary, and of guardianship, and revoke the same. III. To take the probate of wills. IV. To cause to be taken, to receive, file, and record all inventories, sale, and appraisement bills of the estates of deceased persons. V. To require executors, administrators, and guardians to exhibit and settle their accounts, and account for the estates and property that have come into their possession as such. VI. To appoint commissioners to partition personal estate. VII. To authorize guardians to sell and convey or mortgage the personal estate of their wards, to provide for their wants, education, and support.

**SEC. 5. [Bonds of executor, etc.]**—If it shall appear to any such court, by the application, under oath, of any party interested in the bond of any executor, administrator, or guardian appointed by such court, that there is reasonable doubt as to the solvency or sufficiency of the securities upon any such bond, such court shall cause such executor, administrator, or guardian, to be ordered to show cause why he shall not execute a new bond in the premises, with surety to be approved by such court, as provided by law.

**SEC. 6. [Same.]**—If, upon the hearing of any such matter, the court shall require a new bond with sureties, and such executor, administrator, or guardian shall fail to comply with the order of the court, he shall be removed from his said

SEC. 2. The dismissal of actions is governed by the rules applicable to cases commenced before justices of the peace. 6 Neb. 148.—County courts have jurisdiction of actions for the forcible entry and detention of real property. 9 Neb. 151.—In the granting of new trials jurisdiction is the same and no greater than that given to justices of the peace viz: only when the judge is satisfied that the verdict was obtained by fraud, partiality or undue means. 6 Neb. 302.—A county judge has the ordinary powers and jurisdiction of a justice of the peace, and in an action before him, under such jurisdiction when the plaintiff claims \$50, but recovers only \$15, he is entitled to costs. 9 Neb. 263. By amendment to sec. 1103 civil code justices of peace have jurisdiction not exceeding \$200.—The county court is not competent to naturalize aliens. 7 Neb. 471.—A change of venue cannot be taken from county court to a justice of the peace. 10 Neb. 439. A judgment in a case wherein the court had jurisdiction, unappealed from, and where no exceptions were taken on the trial, and same does not appear affirmatively to be unsupported by the petition or bill of particulars, is conclusive. 10 Neb. 578.

SEC. 3. An order allowing an account against an estate may be reviewed on error in the district court. 10 Neb. 333.

trust, and his letters revoked, and another executor, administrator or guardian, as the case may be, appointed in his place.

**SEC. 7. [Terms of court.]**—It shall be the duty of the probate judge, in each county, to hold a regular term of the probate court at his office at the county seat, commencing at nine o'clock A. M., on the first Monday of each calander month, for the trial of such civil actions brought before such court, as are not cognizable before a justice of the peace. Such regular term shall be deemed to be open without any formal adjournment thereof, until the third Monday of the same month, when all causes not then finally determined shall be continued by such court to the next regular term; but such courts shall be deemed to be always open for the filing of papers and issuance of process in civil actions, and for the purpose of taking and entering judgment by confession.

**SEC. 8. [Proceedings.]**—In all cases commenced in said courts wherein the sum exceeds one hundred dollars, it shall be the duty of the probate judge to issue a summons, returnable on the first day of the next term of said court, if there be ten days intervening between the issuance of the summons and the first day of the term, and if not then to be made returnable on the first day of the next term thereafter, which summons shall be directed and delivered to the sheriff or any constable of said county, and the sheriff or constable shall serve the same upon the defendant as in other civil cases, at least ten days before the return day thereof. When the summons has not been served ten days before the first day of the term, the cause shall stand continued until the next regular term of said court, and shall then stand for trial, without further notice to the defendant.

**SEC. 9. [Actions in replevin.]**—In all actions of replevin, the summons shall be in like form, and be returnable within the like time as in similar actions before justices of the peace, but if upon a return of the writ, it appear that the appraised value of the property taken thereon exceeds one hundred dollars, and does not exceed five hundred dollars, such action shall stand continued, as of course, to the next regular term of said court, and shall then be disposed of as other causes during such term; but if it appears that the appraised value of the property in such action exceeds five hundred dollars, then such action, on the return of the writ, shall be forthwith certified to the district court.

**SEC. 10. [Bill of particulars.]**—In all civil actions in the probate court where the amount claimed exceeds one hundred dollars, the plaintiff, his agent or attorney shall, before the summons is issued therein, file in such court a bill of particulars, setting forth, in ordinary and concise language, his demands; and the defendant shall also, on or before the first day of the term at which the cause stands for trial, file in such court his answer containing any set-off or other defense he may have. Such bill of particulars shall be verified in like manner as a petition is required to be verified in the district court, and when so verified, no other or greater proof shall be required to entitle the plaintiff to judgment upon default, than in actions in the district court.

**SEC. 11. [Pleadings.]**—In actions before said court, where the amount claimed exceeds one hundred dollars, motions and demurrers shall be allowed, and the rules of practice concerning pleadings and processes in the district court shall be applicable, so far as may be, to pleadings in the probate court.

**SEC. 12. [Default.]**—If no answer is filed on or before the first day of the

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SEC. 7. The record of a judgment rendered under this section need not show that a regular term had commenced and continued from day to day until the rendition of the judgment. It is sufficient if the proceedings show that the court was in session at the time. 3 Neb. 228.—The jurisdiction given by this and following sections is distinct, as to the amounts authorized to be recovered, from that of a justice of the peace. 5 Neb. 99. Where the amount claimed exceeds one hundred dollars but the verdict is less the plaintiff cannot recover costs. *Id.* *After*, where the amount claimed is \$30 and recovery is for less. 9 Neb. 263. The plaintiff may, at any time before a cause is submitted, dismiss it on his own motion, and a failure to pay costs does not debar him of this right. 6 Neb. 148.—A judgment thus—"Judgment decreed in favor of plaintiff in sum of"—and costs—is sufficient. 7 Neb. 479.—This section does not prevent the court from rendering judgments by confession or hearing and deciding cases by agreement, at any time during the month. 9 Neb. 278 394.—The amendment of a petition in open court by leave of court does not have the effect of extending the time for answering. 8 Neb. 444.—The term continues to and includes the third Monday. 10 Neb. 529.

SEC. 9. The summons in actions of replevin should be made returnable not more than 11 days from the date. 9 Neb. 108.

term, in any action to be tried during such term, the plaintiff may have the default of the defendant entered, and may proceed to judgment on any succeeding day during the term, upon proving his cause of action.

SEC. 13. [Trial by jury.]—Either party may demand a jury for the trial of any cause pending in the probate court, wherein the amount claimed exceeds one hundred dollars; but such demand must be made in writing and entered on the docket on or before the filing of the answer in such cause.

SEC. 14. [Same.]—Upon the filing of such demand for a jury, the probate judge shall cause a jury to be selected and summoned in the same manner as is provided for selecting jurors in civil actions before justices of the peace.

SEC. 15. [Calendar.]—The probate judge, shall, on the first day of each term, or as soon thereafter as may be, prepare [a] calendar of the causes standing for trial at such term, placing the causes upon such calendar in the order in which the same are numbered on the docket, and setting the causes for trial, in such order, upon convenient days during such term; and the provisions of this code relative to the trial docket in the district court shall, so far as they are in their nature applicable, apply to such calendar.

SEC. 16. [Arrest and attachment.]—Orders for arrest and for attachments of property may issue in actions brought under this chapter, but when the demand in such action exceeds the sum of one hundred dollars, the proceedings upon such orders shall be the same, as near as may be, as in actions brought in the district court. The return day of such orders shall, when issued at the commencement of the action, be the same as that of the summons; when issued afterwards, they shall be made returnable forthwith.

SEC. 17. [Stay of execution.]—Any party against whom a judgment is rendered, on all sums exceeding one hundred dollars, may have a stay of execution in like manner as upon judgments rendered in the district court, and upon the same conditions; and upon all sums of one hundred dollars and under, the same as provided for in actions before justices of the peace.

SEC. 18. [Transcripts.]—Any person having a judgment rendered by a probate court, may cause a transcript thereof to be filed in the office of the clerk of the district court in any county of this state, and when said transcript is so filed, and entered upon the judgment record, such judgment shall be a lien on real estate in the county where the same is filed, and when the same is so filed and entered upon such judgment book, the clerk of such court may issue execution thereupon in like manner as execution is issued upon judgments rendered in the district court.

SEC. 19. [Execution.]—The probate judge shall issue execution on judgments rendered by said court, and the proceedings upon any such execution shall, in all cases, be as is provided by law governing executions issued upon the judgments of a justice of the peace.

SEC. 20. [Signing and sealing process.]—All writs, citations, and all process in civil actions, issuing out of any probate court, shall be under the seal thereof, and be signed by the probate judge.

SEC. 21. [Process.]—All process in civil actions in such court shall be directed to the sheriff or any constable of the county and the same shall be served by the officer to whom it is directed, and return thereof made at the time therein directed; and for any neglect or omission to do so, he and his sureties may be proceeded against in like manner as in similar cases before justices of the peace.

#### OF THE PROCESSES OTHER THAN IN CIVIL ACTIONS.

SEC. 22. [Service of process.]—All writs, notices, orders, citations and other process, except in proceedings for contempt, may be served in like manner as a summons in a civil action in the district court, and the service of the same

SEC. 17. Stay of execution on judgments exceeding \$100 are governed by sec. 481, civil code, and the requirements of that section is not answered by giving an undertaking signed by sureties alone. 7 Neb. 418.

SEC. 18. See 5 Neb. 47. 7 Neb. 163.

by a copy thereof left at the usual place of residence of the party to be served, shall be deemed equivalent to personal service thereof in cases where personal service is required by law; but to bring a party into contempt there must have been actual personal service of the process upon the disobedience of which the contempt is founded, and there must be actual personal service of all process in the proceedings for contempt. In cases where writs, notices, citations or other process cannot be served as aforesaid in this state, the probate court may, in cases where it may be necessary, order the service thereof to be made by publication in some newspaper in this state in such manner as the court may direct, and thereupon the same proceedings may be had as in [if] such writs, or other process had been served as aforesaid in this state. Nothing contained in this section shall limit or take away the power of the probate court or judge thereof, to give notice or cause the same to be given by publication in the various cases provided by law.

**SEC. 23. [Service in other counties.]**—All writs and other process, except subpoenas, may be executed and served, as the case may require, in any county in the state; and if it be a county other than that of the residence of the probate judge, the same shall be directed to the sheriff of such other county.

**SEC. 24. [Duties of sheriffs.]**—It shall be the duty of the sheriffs of the several counties to execute or serve all writs and process issued by any probate court and to them directed, and to return the same; for any neglect or refusal so to do, they [may] be proceeded against in the probate court the same as for a neglect or refusal to execute or serve process issued out of the district court.

**SEC. 25. [Repealed 1877, 16. 10 Neb. 268.]**

**SEC. 26. [Appeals, etc.]**—In civil actions brought under the provisions of this chapter, either party may appeal from the judgment of the probate court, or prosecute a petition in error, in the same manner as provided by law in cases tried and determined by justices of the peace. The amount of the bond or undertaking taken shall be double the amount of the judgment and costs, and shall be approved by the probate judge.

#### EVIDENCE.

**SEC. 27. [Depositions, how taken.]**—Depositions may be taken to be used in evidence in any cause, matter or proceeding pending in any probate court, in the like manner and upon the like notice as in actions in the district court. Depositions so taken must be addressed and transmitted to the judge of the court in which the cause, matter or proceeding is pending.

#### MISCELLANEOUS PROVISIONS.

**SEC. 28. [Continuance of causes.]**—When for any cause the probate judge fails to attend at the commencement of any regular term, or at the time when any cause is assigned for trial, or at the time to which any cause may be continued, the parties shall not be obliged to wait more than one hour, and if he does not attend within the hour, the parties in attendance shall be required to attend at nine o'clock A. M. of the following day, and if such judge shall not attend at that time, the cause shall stand continued until the first day of the next regular term. This section shall apply only to causes not cognizable before justices of the peace.

**SEC. 29. [Appearances.]**—In all actions brought in the probate court in pursuance of the provisions of this chapter, parties, jurors and witnesses shall be obliged to appear at the time when the summons is returnable, or at which the cause is assigned for trial, or to which it may be continued.

**SEC. 30. [Adjournments.]**—The provisions of this code relative to adjournment of causes before justices of the peace, shall apply to civil actions in the probate court not cognizable before such justices, so far only as the causes for

SEC. 26. Unless the cause is tried by a jury a bill of exceptions is of no avail in the district court upon a petition in error. 3 Neb. 341. 4 Neb. 96.

adjournment and the conditions to be imposed thereon are concerned, but the time for which the cause may be adjourned, shall be regulated by the probate judge in the exercise of a reasonable discretion; *Provided*, That such action cannot be adjourned over more than three regular terms of said court, upon the application of either party, without consent of the other.

SEC. 81. [**Docket.**].—The probate judge shall keep a docket in which all of his proceedings in civil actions shall be entered in like manner as near as may be, as the proceedings before justices of the peace in civil actions; and the provisions of this code relating to justices' docket shall, as near as may be, apply to the docket of the probate judge.

SEC. 82. [**Probate books.**].—The probate books shall consist of a record, entry, estate and fee book, which shall be kept as follows: I. The record book shall contain a full record of all wills, testaments and codicils, and the probate thereof, all letters testamentary, of administration and guardianship, and all bonds of executors, guardians and administrators. The original papers shall be filed and preserved in the office. II. There shall be entered in the estate book all inventories, appraisements, sale bills and other exhibits and reports received by the court, relative to the settlement or disposition of estates, showing the amount of all such estates, as shown by such instruments. III. The entry book shall contain a fair statement of all the matters, controversies and suits that may have arisen for decision and adjudication before said court, with the names of the parties, dates of each entry, and the judgment or opinion of the court, and all orders thereof, and a full record of all determinations of the district or supreme court upon appeal or petition in error in such matters, controversies and suits. IV. The fee book shall contain an exact account of all fees allowed and paid in each case, showing the names of the persons receiving the same, and for what such fees were paid.

SEC. 83. [**Index.**].—An index shall be attached to each book required to be kept by the probate judge, in which shall be inserted [in] alphabetical order the names of the parties or persons in which [whose] names the entries in such books are made.

SEC. 84. [**Records.**].—Every record made in any probate court, excepting original orders, judgments and decrees thereof, shall have attached thereto a certificate signed by the judge of such court, showing the date of such record and the county in which the same is made, and it shall not be necessary to call such judge or his successor in office to prove such record so certified. And in any cause, matter or proceeding in which the probate court or probate judge has jurisdiction, and is required to make a record not provided for in this chapter, such record shall be certified in the same way and with like effect as aforesaid.

SEC. 85. [**Disqualification of judge.**].—When any probate judge shall be disqualified from acting in any cause or matter before him, or is temporarily absent from the county, the county commissioners may appoint a competent and disinterested person to act in place of such judge, in such case or other matter, during such absence or disqualification, who shall give bonds in the same manner and possess the same powers, and be subject to the duties, restrictions and liabilities therein as are prescribed by law respecting probate judges.

SEC. 86. [**Repealed by 1881, chap. 14. See ante p. 75.**]

SEC. 87. [**Bonds.**].—All bonds required by law to be taken in, or by order of the probate court, shall be for such sum with such sureties as the judge shall prescribe, except as otherwise provided by law, and such bonds shall be for the security and benefit of all persons interested, and shall be taken to the state of Nebraska, except where they are required to be taken to the adverse party.

SEC. 88. [**Repealed Chap. 1, Title XXV, R. S. 534; Laws 1870, 7.**]

SEC. 89. [**Proving records.**].—That in all cases where lands have been

SEC. 35. In the absence of a record to the contrary it will be presumed that one acting as probate judge was appointed under the provisions of this section. 3 Neb. 343.  
SECS. 39-41. "An act prescribing the method of proving records of probate courts relative to the sale of

sold by order of the probate court in any county in the territory or state of Nebraska, on application of the guardian of any minor child, or children, or executor, or administrator, and it shall appear in any action in any court held within this state relating to the title to such land, that the record or any part of the record, of such sale is imperfect or deficient, or that such record or any part thereof, or any paper or papers, notice, affidavit, document, instrument, or any proceeding whatsoever, from the filing of the petition for license to sell until the execution of the deed to the purchaser, has been lost or destroyed by fire or otherwise, or cannot be found, the contents of such record, paper, notice, affidavit, document, instrument or other proceeding, may be proved in the same manner as in case of other lost instruments or papers, by secondary evidence, and when so proved, they shall have the same effect as if proven by the production of the original record, paper, notice, affidavit, document, instrument, or other proceedings, or by a duly certified copy thereof. [G. S. § 1, 271.]

**SEC. 40. [Same—Bonds of guardians, etc.]**—When in such action it shall appear, that the record, or any bond, paper, instrument, or other proceeding connected with the appointments of the guardian, executor, or administrator, by whom such sale was made, has been lost or destroyed by fire or otherwise, or cannot be found, the contents thereof may be proven in the manner and with the effect prescribed in section one of this act, as to the matters therein provided for. [Id. § 2.]

**SEC. 41. [Perpetuating testimony.]**—The testimony of any witness, as to any matter or thing mentioned in this act, may be perpetuated and shall be received and admitted, in any action aforesaid, and with the effect prescribed in this act in the same manner as prescribed by law in other cases. [Id. § 3.]

**SEC. 42. [Appeals in probate matters.]**—In all matters of probate jurisdiction, appeals shall be allowed from any final order, judgment or decree of the county court, to the district court by any person against whom any such order, judgment or decree may be made, or who may be effected thereby. [1881 § 1, 227.]

**SEC. 43. [When taken.]**—All appeals shall be taken within thirty days after the decision complained of is made. [Id. § 2.]

**SEC. 44. [Bond—Cost—Attorney's fee.]**—Every party so appealing shall give bond in such sum as the court shall direct, with two or more good and sufficient sureties, to be approved by the court, conditioned, that the appellant will prosecute such appeal to affect without unnecessary delay, and pay all debts, damages and costs that may be adjudged against him. The bond shall be filed within thirty days from the rendition of such decision. But an executor, administrator, guardian, or guardian *ad litem*, shall not be required to enter into bond in order to enable him to an appeal. If it shall appear to the court that such appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the costs thereof, including an attorney's fee to the adverse party, the court to fix the amount thereof, and said bond shall be liable therefor in cases where it is required. [Id. § 3.]

**SEC. 45. [Effect of bond.]**—After such bond has been filed, the appeal shall be granted, but shall not be a supersedeas in any other matter relating to the administration of the estate, except that from which the appeal is specially taken. [Id. § 4.]

**SEC. 46. [Transcript.]**—When such appeal is taken, the county court shall, on payment of his fees therefor, transmit to the clerk of the district court within ten days after perfecting such appeal, a certified transcript of the record and proceedings relative to the matter appealed from. [Id. § 5.]

**SEC. 47. [Proceedings in district court.]**—Upon the filing of such transcript in the district court, that court shall be possessed of the action, and

lands and appointments of guardians, executors, and administrators, in certain cases, and perpetuating the evidence thereof." G. S. 271. Took effect Feb. 26, 1873.

SECS. 42-48. "An act providing for an appeal from the decision of the county court in certain matters." Approved Feb. 28. Took effect June 1, 1881.

shall proceed to hear, try and determine the same, in like manner as upon appeals, brought upon the judgement of the same court in civil actions. [Id. § 6.]

SEC. 48. [Judgment.]—The final decision and judgment in matters so appealed, shall be certified to the county court, and proceedings shall be had thereon necessary to carry the final decision and judgment into execution. [Id. § 7.]

#### CHAPTER 21.—DAMAGES.\*

SECTION 1. [Caused by death.]—That whenever the death of a person shall be caused by the wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, in respect thereof, then, and in every such case, the person who, or company, or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony. [G. S. § 1, 272.]

SEC. 2. [Action for.]—That every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action, shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries, resulting from such death, to the wife and next of kin of such deceased person, not exceeding the sum of five thousand dollars; *Provided*, That every such action shall be commenced within two years after the death of such person.

SEC. 3. [Provided for act to take effect May 1, 1873.]

#### CHAPTER 22.—DEAF AND DUMB INSTITUTE.†

SECTION 1. [Officers interested in contracts.]—No director, officer, or agent, of the institute, shall be interested in any contract with the corporation, nor in the changing or exchanging of commodities of any kind whatever, nor shall any director be employed in, or appointed to any office or place of emolument, in said institution. [1875 § 3, 147.]

SEC. 2. [Directors—Powers—Employees.]—The said directors are vested with power to appoint or employ, and remove or discharge at pleasure, a principal, matron, teacher, and agents necessary to the successful operation of the institution, and prescribe and regulate their duties, and to fix the salaries or compensation of each. [Id. § 4.]

SEC. 3. [Directors to hold property.]—To enable the said directors to execute the provisions of this act, they are authorized to receive, have, hold, and use property of every description, as well as money from any county or corporation, or from any person desiring to aid in sustaining the institution; *Provided*, That whatever may be conveyed or donated, as aforesaid, shall be used as directed by the grantor, or donor, if accepted, and for no other purpose. [Id. § 7.]

SEC. 4. [Object of institution.]—The object of said institution shall be to promote the intellectual, physical and moral culture of the deaf and dumb, by a judicious and well adopted course of instruction, that they may be reclaimed from their lonely and cheerless condition, restored to society, and fitted for the discharge of the duties of life. [Id. § 8.]

SEC. 5. [Inmates—Admittance.]—All the deaf and dumb residing in

\*NOTE.—"An act authorizing the recovery of damages, by the personal representatives of a person whose death is caused by the wrongful act of a person, company, or corporation." G. S. 272. Took effect May 1, 1873.

†NOTE.—"An act to provide for the government of the institute for the deaf and dumb, and for other purposes." Laws 1875, 147. The government of this institution being vested in board of public lands and buildings, and the sections of the original act, 1, 2, 5, 6 being abrogated, are omitted. See Art. V. § 19, Const. Art. VII. chap. 83, post. Certain special acts relative to erection of buildings, etc. (1871, 94; 1879, 419; 1881, 229), are also omitted. By sec. 11 of the original act (G. S. 275), this institution was located at Omaha.

Nebraska, of suitable age and capacity to receive instruction, shall be admitted into, and enjoy the benefits of said institution without charge. [Id. § 9.]

SEC. 6. [**Moneys, how disbursed.**].—All moneys in the hands of the treasurer of said institution, shall be payable only upon order of the board. [Id. § 10.]

SEC. 7. [**Reports—Treasurer—Principal.**].—The treasurer and principal shall make annual reports to the board of directors, who shall examine the same at the first meeting held in each year, as provided for in this act. [Id. § 11.]

SEC. 8. [**Report to governor.**].—Within ten days preceding the meeting of each regular session of the legislature, the said board shall furnish to the governor a printed report of the action of the board and an estimate of the expenses of the institution in all of its departments, together with a statement of the receipts and disbursement of funds; and during the first week of the session of the legislature, at least ten copies of said report shall be delivered to each member thereof. The said report shall show: *First.* The names of the president and directors, secretary and treasurer, and of the principal and teachers employed, with the compensation allowed to each. *Second.* The names, age, and residences, of the pupils and the dates of their reception into the institution. *Third.* The names, age, and residences of deaf mutes ascertained to be in the state, which have not attended the school. *Fourth.* The names and residences of all other persons in the service of the institute and their business and compensation. *Fifth.* The statement of the accounts of the institute showing the amounts of money received and the dates thereof, and its disbursements. [Id. § 12.]

SEC. 9. [**Vested rights assumed by state.**].—All rights inuring to, and all obligations incurred and contracts made by the corporation, incorporated under an act entitled "An act to incorporate an institute for the deaf and dumb," approved, February 7, 1867, are hereby declared to be vested in and assumed by the state of Nebraska. [Id. § 13.]

#### CHAPTER 23.—DECEDENTS.

SECTION 1. [**Dower.**].—The widow of every deceased person shall be entitled to dower, or the use, during her natural life, of one-third part of all the lands whereof her husband was seized, of all estate of inheritance at any time during the marriage, unless she is lawfully barred thereof. [R. S. 56. G. S. 276.]

SEC. 2. [**Same.**].—If a husband, seized of an estate of inheritance in lands, exchange them for other lands, his widow shall not have a dower of both, but shall have her election to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced by commencement of proceedings to recover her dower of the lands, given in exchange, within one year of the death of her husband, she shall be deemed to have elected to have taken her dower of the lands received in exchange.

SEC. 3. [**Mortgaged lands.**].—When a person seized of any estate of inheritance, shall have executed a mortgage of such estate before marriage, his widow shall be entitled to dower out of the lands mortgaged, as against every person except the mortgagee, and those claiming under him.

SEC. 4. [**Same.**].—Where a husband shall purchase lands during coverture and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to dower as against all other persons.

SEC. 5. [**Same.**].—When, in either of the cases mentioned in the two preceding sections, the mortgagee, or those claiming under him, shall, after the death of the husband, cause the mortgaged premises to be sold by virtue of such mortgage, and any surplus shall remain after payment of the moneys due thereon, and the costs and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus, for her life as dower.



**SEC. 6. [Same.]**—If in either of the cases above specified, the heir or other person, claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in the mortgaged lands, the value of one-third of the residue after such deduction.

**SEC. 7. [Lands aliened by husband.]**—When a widow shall be entitled to dower out of any lands which shall have been aliened by the husband in his lifetime, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated in setting out the widows dower, according to their value at the time when they were so aliened.

**SEC. 8. [Land in several counties.]**—When a widow is entitled to dower in the lands of which her husband died seized, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them, or either of them, it may be assigned to her in whatever counties the lands may lie, by the judge of probate for the county in which the estate of the husband is settled, upon the application of the widow, or any other person interested in the lands; notice of which application shall be given to such heirs, devisees, or other persons, in such manner as the judge of probate shall direct. For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

**SEC. 9. [Setting off dower.]**—The commissioners shall be sworn before a judge or justice of the peace, to the faithful discharge of their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the probate court; and the same being accepted and recorded, and an attested copy thereof filed in the office of the register of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation be set aside or reversed on appeal; and one-half the costs of such proceedings shall be paid by the widow, and one-half by the adverse party.

**SEC. 10. [Where estate cannot be divided.]**—When the estate out of which dower is to be assigned, consists of a mill or other tenements, which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues and profits to be had and received by the widow as a tenant in common with the owners of the estate.

**SEC. 11. [Widow may occupy.]**—When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same with the children or other heirs of the deceased, or may receive one-third part of the rents, issues and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

**SEC. 12. [How right of dower may be barred.]**—A married woman residing within this state, may bar her right of dower in any estate conveyed by her husband, or by his guardian if he be a minor, by joining in a deed of conveyance, and acknowledging the same as prescribed by law, or by joining with her husband in a subsequent deed acknowledged in like manner.

**SEC. 13. [Dower may be barred by jointure.]**—A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her, with her assent, before the marriage, provided such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect, in possession or profit, immediately on the death of the husband.

**SEC. 14. [How assent to be expressed.]**—Such assent shall be expressed, if the woman be of full age, by her becoming a party to the conveyance by which it is settled, and if she be under age, by her joining with her father or guardian in such conveyance.

**SEC. 15. [Provision in lieu of dower.]**—Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if

assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

**SEC. 16. [Wife to elect whether to take dower or jointure.]**—If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made, after marriage, she shall make her election before the death of her husband, whether she will take such jointure or pecuniary provision, or be endowed of the lands of her husband; but she shall not be entitled to both.

**SEC. 17. [Wife to elect between dower and husband's will.]**—If any lands be devised to a woman, or other provision be made for her in the will of her husband, she shall make her election, whether she will take the lands so devised of the provision so made, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will to have been so intended by the testator.

**SEC. 18. [Same.]**—When a widow shall be entitled to an election under either of the two preceding sections, she shall be deemed to have elected to take such jointure, devise or other provision, unless, within one year after the death of her husband, she shall commence proceedings for the assignment or recovery of her dower.

**SEC. 19. [In case of eviction to be endowed anew.]**—If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as jointure, or is deprived of the provision made for her by will or otherwise, in lieu of dower, she may be endowed anew, in like manner as if such assignment, jointure or other provision had not been made.

**SEC. 20. [Aliens and non-residents.]**—A woman being an alien shall not, on that account, be barred of her dower; and any woman residing out of the state shall be entitled to dower of the lands of her deceased husband, lying in this state, of which her husband died seized; and the same may be assigned to her or recovered by her, in like manner as if she and her deceased husband had been residents within the state at the time of his death.

**SEC. 21. [Waste.]**—No woman who shall be endowed of any lands, shall commit or suffer any waste on the same; but every woman so endowed shall maintain the houses and tenements, with the fences and appurtenances, in good repair, and shall be liable to the person having the next immediate inheritance therein, for all damages occasioned by any waste committed or suffered by her.

**SEC. 22. [Widow entitled to dwelling house.]**—A widow may remain in the dwelling house of her husband one year after his death, without being chargeable with rent therefor, and shall have her reasonable sustenance out of the estate, for one year.

**SEC. 23. [Damages.]**—Whenever, in any action brought for the purpose, a widow shall recover her dower in lands of which her husband shall have died seized, she shall be entitled also to recover damages for the withholding of such dower.

**SEC. 24. [Measure of damages.]**—Such damages shall be one-third part of the annual value of the *mesne* profits of the lands in which she shall so recover her dower, to be estimated, in a suit against the heirs of her husband, from the time of his death, and in suits against other persons, from the time of her demanding her dower of such persons.

**SEC. 25. [Same.]**—Such damages shall not be estimated for the use of any permanent improvements, made after the death of her husband, by his heirs, or by any person claiming title to such lands.

**-SEC. 26. [Damages when land is alienated by heir.]**—When a widow shall recover her dower in any lands alienated by the heir of her husband, she shall be entitled to recover of such heir, in a civil action, her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years, in the whole; and the amount which she shall be entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from such grantee, and any

amount recovered as damages from such grantee shall be deducted from the sum she would otherwise be entitled to recover from such heir.

**SEC. 27. [Assignment of dower a bar to further claim.]**—When the widow shall have accepted an assignment of dower in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned to her as aforesaid.

**SEC. 28. [Dower recovered by default or collusion.]**—When a widow, not having right to dower, shall, during the infancy of the heirs of her husband, or any of them, or of any person entitled to the lands, recover dower, by the default or collusion of the guardian of such infant heir or other person, such heir or other person, so entitled, shall not be prejudiced thereby; but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

**SEC. 29. [Estate by curtesy.]**—When any man and his wife shall be seized in her right of any estate of inheritance in lands, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by curtesy; *Provided*, That if the wife, at her death, shall have issue by any former husband, to whom the estate might descend, such issue shall take the same, discharged from the right of the surviving husband to hold the same as tenant by the curtesy.

TITLE TO REAL PROPERTY BY DESCENT.

**SEC. 30. [Order of descent.]**—When any person shall die seized of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, in the manner following: *First*. In equal shares to his children, and to the lawful issue of any deceased child, by right of representation; and if there be no child of the intestate living at his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall have the estate equally; otherwise they shall take according to the right of representation. *Second*. If he shall have no issue, his estate shall descend to his widow during her natural lifetime, and, after her decease, to his father; and if he shall have no issue nor widow, his estate shall descend to his father. *Third*. If he shall have no issue, nor widow, nor father, his estate shall descend, in equal shares to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation; *Provided*, That if he shall have a mother also, she shall take an equal share with his brothers and sisters. *Fourth*. If the intestate shall leave no issue, nor widow, nor father, and no brother nor sister living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of the deceased brother and sister. *Fifth*. If the intestate shall leave no issue, nor widow, and no father, mother, brother, nor sister, his estate shall descend to his next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote; *Provided however*, *Sixth*. If any person shall die, leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child, by inheritance from such deceased parent, shall descend, in equal shares, to the other children of the same

**SEC. 29.** A wife owning real estate in her own right, leased the same and died before the expiration of the lease. A creditor of the husband, brought suit, obtained judgment and sold the husband's estate by curtesy in the demised premises. *Held*, That the purchaser was not entitled to possession of the premises, until the lease had expired. 8 Neb. 525.

**SEC. 30.** Upon death of a tenant in fee without any heirs, his estate vests *eo instanti*, in the state, and the administrator of such estate can convey no title to said estate, and has no right of possession to the same to deliver. 5 Neb. 206. See Art. IX, Chap. 83, post.

parent, and to the issue of any such other children, who shall have died, by right of representation. *Seventh.* If, at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to said child, by inheritance from his said parent, shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to said child, they shall share the said estate equally, otherwise they shall take according to the right of representation. *Eighth.* If the intestate shall leave a widow, and no kindred, his estate shall descend to such widow. *Ninth.* If the intestate shall have no widow, nor kindred, his estate shall escheat to the people of this state.

**SEC. 81. [Illegitimate child.]**—Every illegitimate child shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as an heir of his mother, and shall inherit his or her estate in whole or in part as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried and had other children, and his father, after such marriage, shall have acknowledged him, as aforesaid, or adopted him into his family, in which case such child and all legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate, and without issue, the other shall inherit his estate, and he theirs, as hereinbefore provided, in like manner as if all the children had been legitimate, saving to the father and mother respectively their rights in the estate of all the said children as provided hereinbefore, in like manner as if all had been legitimate.

**SEC. 82. [Estate of illegitimate child.]**—If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or, in case of her decease, to her heirs at law.

**SEC. 83. [How degrees of kindred computed.]**—The degrees of kindred shall be computed according to the rule of the civil law; and kindred of the half blood shall inherit equally with those of the whole blood, in the same degree, unless the inheritance came to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

**SEC. 84. [Advancements.]**—Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the estate of the intestate.

**SEC. 85. [Same.]**—If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

**SEC. 86. [Same.]**—If such advancement be made in real estate, the value thereof shall, for the purposes mentioned in the preceding section, be considered a part of the real estate to be divided; and, if it be in personal estate, it shall be considered a part of the personal estate; and if in either case it shall exceed the share of real and personal estate respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

**SEC. 87. [Same.]**—All gifts and grants shall be deemed to have been made

an advancement, if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

SEC. 88. [Same.]—If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as of that value in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

SEC. 89. [Same.]—If any child or lineal descendant so advanced shall die before the intestate, bearing issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heirs so advanced, in like manner as if the advancement had been made directly to them.

SEC. 40. [Title of tenant by curtesy and in dower.]—Nothing in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower; nor shall the same affect any limitation of any estate by deed or will.

SEC. 41. [Inheritance by right of representation—Posthumous children.]—Inheritance or succession by right of representation, takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

#### USE OF LANDS OF MINORS AND OTHER PERSONS UNDER GUARDIANSHIP, AND SECURING THE PROCEEDS FOR THEIR USE.

SEC. 42. [For what purpose sold.]—When the income of the estate of any person under guardianship, whether as a minor, insane person, or spendthrift, shall not be sufficient to maintain the ward and his family, or to educate the ward when a minor, or the children of such insane person or spendthrift, his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein as provided in this chapter. [1867, 110.]

SEC. 43. [License for sale.]—When it shall satisfactorily appear to the court, upon the petition of any such guardian, that it would be for the benefit of the ward that his real estate, or any part thereof, should be sold, and the proceeds thereof put out at interest or invested in some productive stock, his guardian may do the same for that purpose, upon obtaining a license therefor, and proceeding therein as hereinafter provided.

SEC. 44. [Proceeds of sale.]—If the estate is sold for the purpose mentioned in the forty-second section of this chapter, the guardian shall apply the proceeds of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, for the education of the ward when a minor, or the children of such insane person or spendthrift, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

SEC. 45. [Same.]—If the estate is sold for the purpose of putting out or investing the proceeds as provided in the forty-third section of this chapter, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the district court.

SEC. 46. [Residue of proceeds.]—In every case of the sale of real estate, as provided in this subdivision, the residue of the proceeds, if any, remaining upon the final settlement of the account of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions as the real estate would have been if it had not been sold.

SEC. 42. "An act for the sale of lands of minors and other persons under guardianship and securing the proceeds for their use." 1867, 110. This act is simply a re-enactment of portions of original chapter amended only to give district court jurisdiction instead of probate court as formerly. But see sec. 16, art. VI Const., and p. 28.

SEC. 47. [**Petition for license to sell.**—In order to obtain a license for such sale, the guardian shall present to the district court of the county in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale, which petition shall be verified by the oath of the petitioner.

SEC. 48. [**Order and its contents.**—If it shall appear to the court from such petition, that it is necessary or would be beneficial to the ward that such real estate or some part of it should be sold, the court shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place therein to be specified, not less than four nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

SEC. 49. [**Service of order.**—A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or shall be published at least three successive weeks in such newspaper circulating in the county as the court shall specify in the order.

SEC. 50. [**County commissioners.**—No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the commissioners of the county in which the ward is an inhabitant, shall certify in writing their approbation of the proposed sale.

SEC. 51. [**Proceedings before the district court.**—The judge of the district court, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service of the order, and upon filing the certificate of approbation of the commissioners of the county when necessary, shall hear and examine the proofs and allegations of the petitioner, and of the next of kin, and of all other persons interested in the estate, who shall think proper to oppose the application.

SEC. 52. [**Same.**—On such hearing, the guardian may be examined on oath and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the judge of the district court, in the same manner and with the like effect as in other cases.

SEC. 53. [**License to sell.**—If, after a full examination, it shall appear to the court either that it is necessary or that it would be for the benefit of the ward that the real estate, or any part of it, should be sold, such court may grant a license therefor, specifying therein whether the sale is to be made for the maintenance of the ward and his family, or for the education of the ward or his children, or in order that the proceeds may be put out or invested as aforesaid.

SEC. 54. [**Guardian shall give bond.**—Every guardian licensed to sell real estate, as aforesaid, shall, before the sale, give bond to the judge of the district court with sufficient surety or sureties, to be approved by such judge, with condition to sell the same in the manner prescribed by law for sales of real estate by executors and administrators, and to account for and dispose of the proceeds of the sale in the manner provided by law.

SEC. 55. [**Oath.**—Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath in substance like that required in the succeeding subdivision to be taken by an executor, administrator or guardian, when licensed to sell real estate pursuant to the provisions of that subdivision.

SEC. 56. [**Notice of sale.**—He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as is prescribed in the case of a sale by a guardian, and the evidence of the giving of such notice may be perpetuated in like manner and with the same effect as is provided in case of sale of real estate by guardians.

SEC. 57. [**License in force one year.**—The license granted in pursuance of this subdivision, shall be in force no more than one year after granting the same.

SEC. 58. [**Foreign guardian.**—When any minor, insane person, or spend-

thrift, residing without this state, shall be put under guardianship in the territory or country in which he resides, and shall have no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment in the district court in any county in which there may be any real estate of the ward.

SEC. 59. [**Foreign guardian licensed to sell.**].—After filing such authenticated copy of his appointment, such foreign guardian may be licensed by the district court of the same county, to sell the real estate of the ward in this state, in the same manner and upon the same terms and conditions as are prescribed in this subdivision in the case of a guardian appointed in this state, excepting in the particulars hereinafter mentioned.

SEC. 60. [**Proceedings.**].—Every foreign guardian so licensed to sell real estate, shall take and subscribe the oath required in the like case of guardians appointed in this state, and shall give notice of the time and place of sale, and conduct the same in the manner prescribed for guardians appointed here, and may perpetuate the evidence of notice in the same manner.

SEC. 61. [**Proceeds of sale—Bond.**].—Upon every such sale by a foreign guardian, the proceeds of the sale, or as much thereof as may remain upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions, as the real estate would have been according to the laws of this state, if it had not been sold; and such foreign guardians shall, in every case, before making the sale give bond, with satisfactory surety or sureties, to the judge of the district court, with conditions to account for and dispose of the same accordingly.

SEC. 62. [**Objections—Costs.**].—If any person shall appear and object to the granting of any license prayed for under the provisions of this subdivision, and it shall appear to the court that either the petition or the objection thereto is unreasonable, said court may, in its discretion, award costs to the party prevailing, and enforce the payment thereof.

SEC. 63. [**Limitation.**].—No action for the recovery of any estate sold by a guardian, under the provisions of this subdivision, shall be maintained by the ward, or by any person claiming under him, unless it shall be commenced within five years next after the termination of the guardianship, excepting only that persons out of the state, and minors and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability, or after their return to the state.

SEC. 64. [**Irregularities.**].—In case of an action relating to any estate sold by a guardian, under the provisions of this subdivision, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings, provided it shall appear,—*First.* That the guardian was licensed to make the sale by a district court of competent jurisdiction. *Second.* That he gave a bond which was approved by the judge of the district court, in case any bond was required by the court upon granting the license. *Third.* That he took the oath prescribed in this subdivision. *Fourth.* That he gave notice of the time and place of sale, as prescribed by law. *Fifth.* That the premises were sold accordingly, at public auction, and are held by one who purchased in good faith.

SEC. 65. [**Damages.**].—If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage in a suit on the bond of such guardian, or otherwise, as the case may require.

SEC. 66. [**Adverse claimant.**].—If the validity of any sale made by a guardian under the provisions of this subdivision, shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings, provided it shall appear that the guardian

was licensed to make the sale by the proper district court, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

SALE OF LANDS FOR THE PAYMENT OF DEBTS BY EXECUTORS, ADMINISTRATORS AND GUARDIANS.

**SEC. 67. [Authority of executors.]**—When the personal estate of any deceased person, in the hands of his executors or administrators, shall be insufficient to pay all his debts, with the charges of administering his estate, such executors or administrators may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided. [1867, 114.]

**SEC. 68. [Proceedings.]**—In order to obtain such license, the executor or administrator shall present a petition to the district court from which he received his appointment, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the deceased, so far as the same can be ascertained; a description of all the real estate of which the testator or intestate died seized; and the condition and value of the respective portions or lots; which petition shall be verified by the oath of the party presenting the same.

**SEC. 69. [Order to show cause.]**—If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole or some portion of the real estate for the payment of such debts, the judge of the district court shall thereupon make an order, directing all persons interested in the estate to appear before him at a time and place therein to be specified, not less than six weeks and not more than ten weeks from the time of making such order, to show cause why a license should not be granted to the executor or administrator applying therefor, to sell so much of the real estate of the deceased as shall be necessary to pay such debts.

**SEC. 70. [Service of order.]**—A copy of such order to show cause shall be personally served on all persons interested in the estate, at least fourteen days before the time appointed for hearing the petition, or shall be published four successive weeks in such newspaper as the court shall order; *Provided, however,* If all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.\*

**SEC. 72. [Hearing.]**—The judge of the district court, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service or publication of a copy of the order, or upon filing the consent, in writing, to such sale, of all persons interested, shall proceed to the hearing of such petition, and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioner, and of all persons interested in the estate, who shall think proper to oppose the application.

**SEC. 73. [Testimony.]**—The executor or administrator may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the district judge in the same manner and with the like effect as in other cases.

**SEC. 74. [Sale.]**—If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, said court may authorize the sale of the whole estate, or such part thereof as may be judged necessary, and most for the interest of all concerned.

**SEC. 75. [Bond.]**—When the executor or administrator is authorized to sell more than is necessary for the payment of debts, he shall, before the sale, give bond to the judge of the district court, with sufficient sureties, to account for all

\*In numbering the sections of this chapter, in the Revised Statutes of 1866, the section numbered 71 was omitted.



the proceeds of the sale that shall remain after the payment of the debts and charges, and to dispose of the same according to law; and in all cases where license is granted for the sale of real estate, the judge of the district court may require a further bond from the executor or administrator, when he shall deem it necessary.

**SEC. 76. [Proceeds of sale.]**—The proceeds of any real estate sold for the payment of debts, and charges of administration, as provided in this subdivision, shall be deemed assets in the hands of the executor or administrator, in like manner as if the same had been originally part of the goods and chattels of the deceased, and the executor and administrator, and the sureties in his administration bond, shall be accountable and chargeable therefor.

**SEC. 77. [Bond of persons interested in estate.]**—No license to sell real estate shall be granted, if any of the persons interested in the estate shall give bond to the judge of the district court, in such sum and with such sureties as he shall direct and approve, with condition to pay all the debts, and the expenses of administration, so far as the goods and chattels, rights and credits of the deceased shall be insufficient therefor, within such time as the judge of the court shall direct.

**SEC. 78. [Same.]**—The bond mentioned in the preceding section shall be for the security, and may be prosecuted for the benefit of the creditors, as well as the executor or administrator.

**SEC. 79. [Order of sale.]**—If the judge of the district court shall be satisfied, after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of valid claims against the deceased, and charges of administration, or if such sale be assented to by all persons interested, he shall thereupon make an order of sale, authorizing the executor or administrator to sell the whole, or so much and such part of the real estate described in the petition as he shall judge necessary or beneficial.

**SEC. 80. [Same.]**—The order shall specify the lands to be sold, and the judge of the district court may therein direct the order in which several tracts, lots or parcels shall be sold; and if it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the district judge shall order that part descended to heirs, to be sold before that so devised; and if it appear that any lands devised or descended have been sold by the heirs or devisees, then the lands in their hands remaining unsold shall be ordered to be first sold.

**SEC. 81. [Order to executor.]**—Upon the making of such order, and the filing with the judge of the district court of such bond as is required by the provisions of this subdivision, a certified copy of the order of sale shall be delivered by the judge to the executor or administrator, who shall thereupon be authorized to sell the real estate, as therein directed, within one year after the making of the order, but not after that period.

**SEC. 82. [License.]**—License to sell real estate, as provided in this subdivision, may extend to the reversion of the dower of the widow of a deceased person; and if such reversion be not sold with the other real estate, it may be sold after the expiration of the widow's term.

**SEC. 83. [Notice of sale.]**—When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper if there be one printed in the same county, and if there be none, then in such paper as the court may direct, for three weeks successively next before such sale, in which notice the lands and tenements to be sold shall be described with common certainty.

**SEC. 84. [Sale.]**—Such sale shall be in the county where the lands are situated, at public vendue, between the hours of nine in the morning and the setting of the sun the same day, and said sale shall be held open for one hour within said

specified time, which hour shall be stated in the notice of sale provided for in the preceding section.

**SEC. 85. [Executor not to be a purchaser.]**—The executor or administrator making the sale, and the guardian of any minor heir of the deceased, shall not directly or indirectly purchase, or be interested in the purchase of any part of the real estate so sold; and all sales made contrary to the provisions of this section shall be void; but this section shall not prohibit any such purchase by a guardian for the benefit of his ward.

**SEC. 86. [Credit.]**—On such sale, the executor or administrator may give such length of credit, not exceeding three years, and for not more than three-fourths of the purchase money, as shall seem best calculated to produce the highest price, and shall have been directed, or shall be approved by the judge of the district court, and shall secure the moneys for which credit is given, by a bond of the purchaser and by a mortgage of the premises sold.

**SEC. 87. [Return of proceedings.]**—The executor or administrator making any sale, shall immediately make a return of his proceedings upon the order of sale in pursuance of which it is made, to the judge of the district court granting the same, who shall examine the proceedings, and may also examine such executor or administrator, or any other person, on oath, touching the same; and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent., exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale, and direct another to be had, of which notice shall be given; and the sale shall be in all respects as if no previous sale had taken place.

**SEC. 88. [Confirmation of sale.]**—If it shall appear to the district judge that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum than above specified cannot be obtained, he shall make an order confirming such sale, and directing conveyances to be executed.

**SEC. 89. [Oath.]**—Every executor or administrator authorized to sell real estate, as provided in this subdivision, shall, before making such sale, take and subscribe an oath before the judge of the district court, or some other officer authorized to administer oaths, that in disposing of the real estate which he is licensed to sell, he will exert his best endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested, which oath shall be filed with the judge of the district court before the confirmation of the sale.

**SEC. 90. [Proof of notice of sale.]**—An affidavit of the executor or administrator, or of some other person having knowledge of the fact, that notice of any such sale was given as provided in this subdivision, being made before the judge of the district court or some other officer authorized to administer oaths, and filed and recorded in the district court, together with a copy of the notice, shall be admitted as evidence of the time, place and manner of giving the notice.

**SEC. 91. [Adjourned sale.]**—If, at the time appointed for any such sale, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale shall be postponed, he may adjourn the same from time to time, not exceeding, in all, three months.

**SEC. 92. [Notice.]**—In case of such adjournment, notice thereof shall be given, by a public declaration at the time and place first appointed for the sale, and if the adjournment shall be more than one day, further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

**SEC. 93. [Sale to pay legacies.]**—When a testator shall have given any legacy by will, that is effectual to pass or charge real estate, and his goods and chattels, rights and credits shall be insufficient to pay such legacy, together with his debts and the charges of administration, the executor or administrator, with the will annexed, may be licensed to sell his real estate for that purpose, in the same manner and upon the same terms and conditions as are prescribed in this subdivision, in the case of a sale for the payment of debts.

**SEC. 94. [Contracts.]**—If a deceased person, at the time of his death, was possessed of a contract for the purchase of land, his interest in such land and under such contract may be sold, on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this subdivision in respect to lands of which he died seized, except as hereinafter provided.

**SEC. 95. [Sale subject to future payments.]**—Such sale shall be made subject to all payments that may thereafter become due on such contracts, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the judge of the district court until the purchaser shall execute a bond to the executor or administrator for the benefit and indemnity of the person entitled to the interest of the deceased in the land so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the judge of the district court shall approve.

**SEC. 96. [Conditions of bond.]**—Such bond shall be conditioned that such purchaser will make all payment for such land as shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the person so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

**SEC. 97. [Assignment of contract.]**—Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of such contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, interest and title of the person entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had if he were living.

**SEC. 98. [Proceeds of sale.]**—The proceeds of every such sale of the interest of the deceased person in lands under contract, as hereinbefore mentioned, shall be disposed of, in all respects, in the same manner as the proceeds of the sale of lands of which the deceased died seized, according to the provisions of this subdivision.

**SEC. 99. [Sale to be subject to mortgages, etc.]**—All sales and conveyances of land made by executors or administrators, pursuant to the provisions of this subdivision, shall be subject to all charges thereon, by mortgage or otherwise, existing at the time of the death of the testator or intestate; and in case the estate of the deceased shall be in any way liable for the amount secured by any such mortgage, or for any such charge, such sale shall not be confirmed by the judge until the purchaser shall execute a bond to the executor or administrator, as required in this subdivision in the case of the sale of a contract for the purchase of lands on which payments are to become due.

**SEC. 100. [Foreign executors.]**—When an executor or administrator shall be appointed in any state or territory, or in any foreign country, on the estate of any person dying out of this state, and no executor or administrator thereon shall be appointed in this state, the foreign executor or administrator may file an authenticated copy of his appointment, in the district court in any county in which there may be any real estate of the deceased.

**SEC. 101. [Sale by foreign executor.]**—Upon filing such authenticated copy of his appointment, such foreign executor or administrator may be licensed by the same court to sell real estate for the payment of debts or legacies, and charges of administration, in the same manner, and upon the same terms and conditions, as are prescribed in the case of an executor or administrator appointed in this state, excepting in the particulars in which a different provision is hereinafter made.

**SEC. 102. [Need not give bond.]**—When it shall appear to the court granting the license, that such foreign executor or administrator is bound by suf-

ficient surety or sureties, in the state or country in which he was appointed, to account for the proceeds of such sale for the payment of debts or legacies and charges of administration, and a copy of such bond, duly authenticated, shall be filed in such court, no further bond for that purpose shall be required of him by the court.

SEC. 103. [**Foreign bond.**—If an authenticated copy of such bond shall not be filed, as mentioned in the preceding section, such foreign executor or administrator, before making such sale, shall give bond, with sufficient sureties, to the judge of the district court, with condition to account for and dispose of the proceeds of such sale for the payment of the debts or legacies of the deceased, and the charges of administration, according to the law of the state or country in which he was appointed.

SEC. 104. [**Bond required.**—When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies and charges of administration, as before provided for in this subdivision, he shall, before making the sale, give bond with sufficient sureties to the judge of the district court, with condition to account to him for all proceeds of the sale that shall remain after payment of the said debts, legacies and charges, and to dispose of the same according to law.

SEC. 105. [**Sale by guardian.**—When the goods, chattels, rights and credits in the hands of the guardian of any minor, or of any idiot or insane person, or of any person under guardianship on account of excessive drinking, gaming, idleness, or debauchery, shall be insufficient to pay all the just debts of his ward, with the charges of managing his estate, the guardian may be licensed by the district court of the county in which such guardian was appointed, to sell his real estate for that purpose, in like manner and upon the same terms and conditions as are prescribed in this subdivision, in the case of a sale by an executor or administrator, except as to the particular in which a different provision is herein-after made.

SEC. 106. [**Same.**—If it shall be represented to the court, that it is necessary to sell some part of the real estate of the ward, and by such partial sale the residue of the real estate, or some specific piece or part thereof would be greatly injured, the court may license the sale of the whole of the estate, or of such part thereof as the court shall judge necessary, and most for the interest of all concerned.

SEC. 107. [**Bond of guardian.**—The guardian shall give bond to the judge of the district court, to account for the surplus of the proceeds of the sale, in like manner as is prescribed in this subdivision in the case of a like sale by an executor or administrator.

SEC. 108. [**County commissioners.**—No license shall be granted to any guardian to sell real estate of his ward, as provided in this subdivision, in any case excepting that of minors, unless the commissioners of the county of which the ward is an inhabitant, or in which he resides, shall certify to the judge of the district court, in writing, their approbation of such proposed sale, and that they deem it necessary.

SEC. 109. [**Persons interested may appear, etc.**—All those who are next of kin and heirs apparent or presumptive of the ward, shall be considered as interested in the estate, and may appear and answer to the petition of the guardian, and when personal notice of the time and place of hearing the petition is required to be given, they shall be notified as persons interested according to the provisions respecting similar sales by executors and administrators, contained in this subdivision.

SEC. 110. [**Foreign guardian.**—When any minor, insane person or spendthrift, residing out of this state, shall be put under guardianship in the state or country in which he resides, and shall have no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment in the district court of any county in which there may be any real estate of the ward.

**SEC. 111. [Sale.]**—After filing an authenticated copy of his appointment, such foreign guardian may be licensed to sell the real estate for the payment of the debts of the ward, and the charges of managing his estate, in the same manner and upon the same terms and conditions as are prescribed in this subdivision, in the case of a guardian appointed in this state, excepting in the particulars wherein a different provision is hereinafter made.

**SEC. 112. [No further bond required.]**—When it shall appear to the judge of the district court that the foreign guardian is bound, with sufficient surety or sureties in the state or country where he was appointed, to account for the proceeds of such sale, and an authenticated copy of such bond shall be filed in the district court, no further bond shall be required here; otherwise, he shall give bond in like manner as is prescribed in this subdivision, in case of sales by foreign executors or administrators.

**SEC. 113. [When bond to be given.]**—When such foreign guardian is authorized to sell more than is necessary to pay the debts and charges, he shall, before making the sale, give bond with sufficient surety or sureties to the judge of the district court, with condition to account, before such judge, for all the proceeds of the sale that shall remain after payment of the said debts and charges, and to dispose of the same according to law.

**SEC. 114. [Proceeds of sale.]**—In all cases of sale by an executor, administrator or guardian, of part or the whole of the real estate of his testator, intestate or ward, under a license granted by any district court, by virtue of the provisions of this subdivision, whether such executor, administrator or guardian was appointed in this state or elsewhere, the surplus of the proceeds of the sale remaining on the final settlement of the accounts, shall be considered as real estate and disposed of among the persons, and in the same proportion as the real estate would have been by the laws of this state, if it had not been sold.

**SEC. 115. [Oath—Notice of proceedings.]**—Every guardian, whether appointed in this state or elsewhere, when licensed to sell real estate, as provided in this subdivision, shall, before making such sale, take and subscribe an oath like that required in the same case of an executor or administrator; and notice shall be given and the proceedings shall be conducted in the like manner as is prescribed in the case of an executor or administrator; and the evidence of giving such notice may be perpetuated in the same manner.

**SEC. 116. [Objections to granting license.]**—If any person shall appear and object to the granting of any license prayed for under the provisions of this subdivision, by the executor, administrator or guardian, and if it shall appear to the court that either the petition or objection thereto is unreasonable, the court may, in its discretion, award costs to the party prevailing, and may enforce the payment thereof.

**SEC. 117. [Limitation of actions.]**—No action for the recovery of any estate sold by an executor or administrator, under the provisions of this subdivision, shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be commenced within five years next after the sale, and no action for any estate sold in like manner by a guardian, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, except as hereinafter provided.

**SEC. 118. [Exceptions.]**—The preceding section shall not apply to persons out of this state, nor to minors or others under any legal disability to sell at the time the right of action shall first accrue; but all such persons may commence such action at any time within five years after the removal of the disability, or their return to this state.

**SEC. 119. [Irregularities not to avoid sale.]**—In the case of any action relating to any estate sold by an executor, administrator or guardian, in which an heir, or person claiming under him, shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings, provided it shall

appear.—*First.* That the executor, administrator or guardian was licensed to make the sale by the district court having jurisdiction. *Second.* That he gave a bond, which was approved by the judge of the district court, in case a bond was required upon granting a license. *Third.* That he took the oath prescribed in this subdivision. *Fourth.* That he gave notice of the time and place of the sale, as in this subdivision prescribed; and, *Fifth.* That the premises were sold accordingly, and the sale confirmed by the court, and that they are held by one who purchased them in good faith.

SEC. 120. [Damages.]—If there shall be any neglect or misconduct in the proceedings of the executor, administrator or guardian, in relation to such sale, by which any person interested in the estate shall suffer damages, such aggrieved party may recover the same in a suit on the bond, or otherwise, as the case may require.

SEC. 121. [Adverse claimants.]—If the validity of a sale made by an executor, administrator or guardian shall be drawn in question by any person claiming adversely to the title of the deceased testator or intestate, or of the ward, or claiming under any title that is not derived from or through the deceased person or the ward, the sale shall not be held void on account of any irregularity of the proceedings, provided it shall appear that the executor, administrator or guardian was licensed to make the sale by a district court having jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

SEC. 122. [Liability of executor, etc.]—Any executor, administrator or guardian who shall fraudulently sell any real estate of his testator, intestate, or ward, contrary to the provisions of this subdivision, shall be liable in double the value of the land sold, as damages, to be recovered in a civil action by the person having an estate of inheritance therein.

#### WILLS.

SEC. 123. [Power to make wills.]—Every person of full age and sound mind, being seized in his own right of any lands, or any right thereto, or entitled to any interest therein descendable to his heirs, may devise and dispose of the same by his last will and testament, in writing; and all such estate not disposed of by will shall descend as the estate of an intestate, being chargeable in both cases with the payment of all debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament, in writing, and may alter or revoke the same in like manner that a person under no disability may do, and subject to the same restrictions. [Amended March 3. Took effect June 8, 1881.]

SEC. 124. [Devise, how construed.]—Every devise of land, in any will hereafter made, shall be construed to convey all the estate of the deviser therein, which he could lawfully devise, unless it shall clearly appear, by the will, that the deviser intended to convey a less estate.

SEC. 125. [After acquired estate.]—Any estate, right or interest acquired by the testator, after the making of his will, shall pass thereby in like manner as if possessed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

SEC. 126. [Personal estate.]—Every person of full age and sound mind may, by his last will and testament, in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his rights thereto and inter-

SEC. 122. This section was originally enacted in 1861. (Laws of 1860, §55, page 77.) Re-enacted in 1866. (R. S., page 81.) Amended in 1867. (Laws, 12 Sess. Terr., page 23,) by adding thereto the following: "When any real estate authorized to be sold as hereinbefore set forth, by a guardian, administrator, or executor appointed in this territory, shall lie in any other county than the one in which such guardian, administrator, or executor was appointed, such guardian, administrator or executor, before advertising such real estate for sale, shall file for record, in the office of the probate judge of the county in which such real estate is situated, his letters of guardianship or administration, and also his license to sell such real estate, and it shall be the duty of such probate judge to record the same in his official record." This amendment has not been repealed in direct terms, but the section was re-enacted, as given in the text, in 1867. (Laws of 1867, page 123,) *Quære*: Whether the amendment is in force.

est therein, and all such estate not disposed of by the will shall be administered as intestate estate.

**SEC. 127. [Wills to be signed and witnessed.]**—No will made within this state, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to charge, or in any way affect the same, unless it be in writing, and signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

**SEC. 128. [Nuncupative will.]**—No nuncupative will shall be good, when the estate thereby bequeathed shall exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses, at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect; nor, unless such nuncupative will was made at the time of the last sickness of the deceased, and in the place of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more next before the making of such will, except when such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

**SEC. 129. [Same.]**—After six months shall have passed after speaking any testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken, nor shall letters testamentary or probate of any nuncupative will pass the seal of any probate court, until fourteen days, at least, after the decease of the testator be fully expired; nor shall any nuncupative will be at any time approved and allowed, unless process shall first have been issued to call in the widow and other person or persons principally interested, if resident within the state, to the end that they may contest the same if they please. Nothing herein contained shall prevent any soldier, being in actual service, nor any marine, being on shipboard, from disposing of his wages, and other personal estate, by nuncupative will.

**SEC. 130. [When devise to witness void.]**—All beneficial devises, legacies and gifts whatsoever, made or given in any will, to a subscribing witness thereto, shall be wholly void, unless there be two other competent subscribing witnesses to the same; but a new charge on the lands of the devisor for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

**SEC. 131. [When devise to witness saved.]**—But if such witness, to whom any beneficial devise may have been made or given, would have been entitled to any share of the estate of the testator, in case the will was not established, then so much of the share that would have descended or been distributed to such witness, as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

**SEC. 132. [Revoking will.]**—No will nor any part thereof, shall be revoked, unless by burning, tearing, canceling or obliterating the same, with the intention of revoking it, by the testator, or by some person in his presence and by his direction; or by some other will or codicil in writing, executed as prescribed in this chapter; or by some other writing signed, attested and subscribed in the manner provided in this chapter, for the execution of a will; excepting only, that nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

**SEC. 133. [Deposit of will.]**—Any will, in writing, being enclosed in a

sealed wrapper, and having endorsed thereon the name of the testator and his place of residence, and the day when and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the probate judge in the county where the testator lives, and the probate judge shall receive and safely keep such will, and give a certificate of the deposit thereof.

**SEC. 134. [Delivery and opening of will.]**—Such will shall, during the lifetime of the testator be delivered only to himself, or to some person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness; and after the death of the testator, and at the first probate court after notice thereof, it shall be publicly opened by the judge of probate, and be retained by him.

**SEC. 135. [Notice.]**—The judge of probate shall give notice of such will being in his possession, to the executor therein appointed, if there be one, otherwise, to the persons interested in the provisions of the same, to be presented for probate in such court.

**SEC. 136. [Other custodians of will.]**—Every person other than the judge of probate, having the custody of any will, shall, within thirty days after he has a knowledge of the death of the testator, deliver the same into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

**SEC. 137. [Executor.]**—Every person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has a knowledge that he is named executor, if he obtains such knowledge after the death of the testator, present such will to the probate court, which has jurisdiction of the case, unless the will shall have been otherwise deposited with the judge of probate, and shall, within the period above mentioned, signify to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

**SEC. 138. [Penalty.]**—Every person who shall neglect to perform any of the duties required in the last two preceding sections, without reasonable cause, shall be guilty of a misdemeanor, and shall be liable to each and every person interested in such will, for the damages which each person may sustain thereby.

**SEC. 139. [Punishment.]**—If any person having the custody of any will after the death of the testator, shall, without reasonable cause, neglect to deliver the same to the probate court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county by warrant issued by such court, and there be kept in close confinement until he shall deliver the will as above directed.

**SEC. 140. [Probate of will—Notice.]**—When any will shall have been delivered into or deposited in any probate court having jurisdiction of the same, such court shall appoint a time and place for proving it, when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by personal service on all persons interested, or by publication under an order of such court, in such newspaper printed in this state as the judge may direct, three weeks successively, previous to the time appointed, and no will shall be proved until notice shall be given as herein provided.

**SEC. 141. [Same.]**—If no person shall appear to contest the probate of a will at the time appointed for that purpose, the court may, in its discretion, grant probate thereof on the testimony of one of the subscribing witnesses, or if such a witness shall testify that such will was executed in all the particulars required in this chapter, and that the testator was of a sound mind at the time of the execution thereof.

**SEC. 142. [Testimony.]**—If none of the subscribing witnesses shall remain in this state at the time appointed for proving the will, the court may, in its discretion, admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will, and, as evidence of the execution of the will, admit proof of the handwriting of the testator, and of the subscribing witnesses.

**SEC. 143. [Will not effectual, when.]**—No will shall be effectual to pass



**SEC. 160. [Certificate.]**—Every will, when proved as provided in this subdivision, shall have a certificate of such proof indorsed thereon or annexed thereto, signed by the judge of probate and attested by his seal; and every will so certified, and the record thereof, or a transcript of such record, certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this state without further proof.

**SEC. 161. [Recording will.]**—An attested copy of every will devising lands, or any interest in lands, and of the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised are situated.

**SEC. 162. [Executor.]**—The word "executor" in this chapter shall be construed to include an administrator with the will annexed.

LETTERS TESTAMENTARY AND OTHER PROCEEDINGS ON THE PROBATE OF A WILL.

**SEC. 163. [Issuance of letters.]**—When a will shall have been duly proved and allowed, the probate court shall issue letters testamentary thereon, to the person named executor therein, if he is legally competent, and he shall accept the trust and give bond as required by law.

**SEC. 164. [Bond of executor.]**—Every executor, before he shall enter upon the execution of his trust, and before letters testamentary shall issue, shall give bond to the judge of probate in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows: To make and return to the probate court, within three months, a true and perfect inventory of all the goods, chattels, rights, credits and estate of the deceased which shall come to his possession or knowledge, or to the possession of any other person for him; to administer according to law and to the will of the testator, all his goods, chattels, rights, credits and estate which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies and charges, chargeable on the same, or such dividends thereon as shall be ordered and decreed by the probate court; to render a true and just account of his administration to the probate court within one year, and at any other time when required by such court; and to perform all orders and decrees of the probate court, by the executor to be performed in the premises.

**SEC. 165. [When executor is residuary legatee.]**—If, however, the executor shall be a residuary legatee, instead of the bond described in the preceding section, he may give a bond in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator, and in such case he shall not be required to return an inventory.

**SEC. 166. [Refusal of executor to act.]**—No person named as executor in any will, who shall refuse to accept the trust, or shall neglect to give bond as prescribed in this subdivision, for twenty days after the probate of such will, shall intermeddle or act as executor.

**SEC. 167. [Same.]**—If a person named executor in any will shall refuse to accept the trust, or shall, for the space of twenty days after the probate of the same, neglect to give bond as required by law, the probate court may grant letters testamentary to the other executors, if there be any who are capable and willing to accept the trust, and if there be no such other executor who will give bond, the court may commit administration of estate with the will annexed, to such person as would have been entitled to the same, if the testator had died intestate.

**SEC. 168. [Minors.]**—When the person named executor in any will, is under full age at the time of proving the will, administration shall be granted with the will annexed, during the minority of the executor, unless there shall be another executor who shall accept the trust and give bond, and in that case the executor who shall give bond shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor on giving bond according to law.

**SEC. 165.** When a bond is given under the provisions of this section, and no fraud or mistake is alleged, the fact of sufficient assets in the hands of the executor will be conclusively presumed, and the want of them cannot be urged to defeat a recovery on the bond. 9 Neb. 293.

SEC. 169. [**Administrator with will annexed.**].—Every person who shall be appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give bond to the judge of probate in the same manner and with the same condition as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an executor would be required to do.

SEC. 170. [**Unmarried woman.**].—When an unmarried woman, appointed an executrix alone or jointly with another person, shall marry, her marriage shall extinguish her authority as executrix, and her husband shall not be executor in her right.

SEC. 171. [**Removal of executor.**].—If an executor shall reside out of this state, or shall neglect, after due notice given by the judge of probate, to render his account and settle the estate according to law, or to perform any decree of the court, or shall abscond, or become insane, or otherwise incapable or unsuitable to discharge the trust, the probate court may remove such executor.

SEC. 172. [**Who to execute trust.**].—When an executor shall die or be removed, or his authority shall be extinguished, the remaining executor, if there be any, may execute the trust; and if there shall be no other executor, administration with the will annexed may be granted of the estate not already administered.

SEC. 173. [**Where all executors not authorized to act.**].—When an executor appointed in any will, shall not be authorized, according to the provisions of this subdivision, to act as such, such as are authorized shall have the same authority to perform every act and discharge every trust required and allowed by the will, and their acts shall be as valid and effectual for every purpose, as if all were authorized and should act together; and administrators with the will annexed, shall have the same authority to perform every act and discharge every trust, as the executor named in the will would have had, and their acts shall be as valid and effectual for any purpose.

SEC. 174. [**Death of surviving executor.**].—The executor of an executor shall not, as such, have any authority to administer the estate of the first testator, but on the death of the only surviving executor of any will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the probate court may judge proper.

SEC. 175. [**Bond.**].—When two or more persons shall be appointed executors of any will, the judge of probate may take a separate bond from each of them, with sureties, or a joint bond from all of them, with sureties.

#### ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

SEC. 176. [**Distribution of personal estate.**].—When any person shall die possessed of any personal estate, or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows: *First.* The widow, if any, shall be allowed all the articles of apparel and ornament, and all the wearing apparel and ornaments of the deceased, the household furniture of the deceased, not exceeding in value two hundred and fifty dollars, and other personal property, to be selected by her, not exceeding in value two hundred dollars; and this allowance shall be made as well when the widow receives the provision made for her in the will of her husband as when he dies intestate. *Second.* The widow and children constituting the family of the deceased shall have such reasonable allowance out of the personal estate, or out of the income of the real estate, as the court of probate may judge necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances, which in case of an insolvent estate shall not be longer than one year after granting administration, nor for any time after the dower and personal estate shall be assigned to the widow. And when the personal estate and the income from the real estate shall be insufficient to meet the allowances made, or any other allowance made as provided by law, such an allowance shall be deemed a debt against the estate, to be paid out of the proceeds of the sale of any real

estate, and to take its preference for payment next after debts due this state, and before the claims of general creditors. [As amended 1878, G. S. 309.] *Third.* When a person shall die, leaving children under seven years of age, having no mother, or when the mother shall die before the children shall arrive at the age of seven years, an allowance shall be made for the necessary maintenance of such children, until they arrive at the age of seven years, out of such part of the personal estate and the income of such part of the real estate as would have been assigned to their mother if she had been living. *Fourth.* If, on the return of the inventory of any estate, it shall appear that the value of the saleable estate does not exceed the sum of one hundred and fifty dollars, the probate court may by a decree for that purpose, assign for the use and support of the widow and children of such intestate, or for the support of the children under seven years of age if there be no widow, the whole of such estate, after the payment of the funeral charges, and expenses of administration. *Fifth.* If the personal estate shall amount to more than one hundred and fifty dollars, and more than the allowances mentioned in the preceding subdivisions of this section, the same shall be applied to the payment of the debts of the deceased, with the charges of his funeral, and of settling his estate. *Sixth.* The residue, if any, of the personal estate shall be distributed in the same proportion, to the same persons, and for the same purposes as prescribed for the descent and disposition of the real estate, except that the widow, if any, shall be entitled to receive the same share of such residue, as a child of the intestate would be entitled to.

SEC. 177. [**Jurisdiction of probate court.**].—When any person shall die intestate, being an inhabitant of this state, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant or resident, at the time of his death. If such deceased person, at the time of death, resided in any other territory, state, or country, leaving estate to be administered in this state, administration thereof shall be granted by any probate court of any county in which there shall be estate to be administered; and the administration first legally granted shall extend to all the estate of the deceased in this state, and shall exclude the jurisdiction of the probate court of every other county.

SEC. 178. [**Administration, to whom granted.**].—Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same, in the following order. *First.* The widow, or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust. *Second.* If the widow, or next of kin, or the person selected by them, shall be unsuitable or incompetent, or if the widow or next of kin shall neglect, for thirty days after the death of the intestate, to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it. *Third.* If there be no such creditor competent and willing to take administration, the same may be committed to such other person or persons as the judge of probate may think proper.

SEC. 179. [**Bond.**].—Every administrator before he enters upon the execution of his trust, and before letters of administration shall be granted to him, shall give a bond to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

SEC. 180. [**Special administrator.**].—When there shall be a delay in the granting letters testamentary, or of administration, occasioned by an appeal from the allowance or disallowance of the will, or from any other cause, the judge of probate may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question on the allowance of the will, or such other question as shall occasion the delay, shall be terminated, and

an executor or administrator be thereupon appointed, and no appeal shall be allowed from the appointment of such special administration.

SEC. 181. [**Duties.**].—An administrator appointed according to the provisions of the preceding section, shall collect the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator who may afterwards be appointed, and for that purpose may commence and maintain suits as an administrator, and may sell such perishable and other personal estate as the probate court may order to be sold.

SEC. 182. [**Liability.**].—Such special administrator shall not be liable to an action by any creditor, to be called upon in any other way to pay the debts against the deceased.

SEC. 183. [**Bond.**].—Every such special administrator shall, before entering upon the duties of his trust, give a bond to the judge of probate, as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits and effects of the deceased, which shall come to his possession or knowledge, and that he will truly account for all the goods, chattels, debts and effects of the deceased, which shall be received by him, whenever required by the probate court, and will deliver the same to the person who shall afterwards be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

SEC. 184. [**Powers cease.**].—Upon granting letters testamentary, or of administration, on the estate of the deceased, the power of such special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the goods, chattels, money and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute to final judgment any suit commenced by such special administrator.

SEC. 185. [**Embezzlement.**].—If any person, before the granting of letters testamentary, or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, such person shall stand chargeable, and be liable to the action of the executor or administrator of such estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate.

SEC. 186. [**Death of executor.**].—When any such executor or administrator shall die without having fully administered the estate, the probate court may grant letters of administration with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased not already administered.

SEC. 187. [**Removal of administrator.**].—If any administrator shall reside out of this state, or shall neglect, after due notice by the judge of probate to render his account and to settle the estate according to law, or to perform any decree of such court, or shall abscond or become insane, or otherwise unsuitable and incapable to discharge the trust, the probate court may, by an order therefor, remove such administrator.

SEC. 188. [**Administratrix.**].—When an unmarried woman who is administratrix alone or jointly with another person, shall marry, her marriage shall extinguish her authority as administratrix.

SEC. 189. [**Remaining administrator to act.**].—When an administrator shall be removed, or his authority shall be extinguished, the remaining administrator may execute the trust; if there shall be no other, the court of probate may commit administration of the estate not already administered to some suitable person, as in case of the death of a sole administrator.

SEC. 190. [**Powers.**].—An administrator appointed in the place of any former executor or administrator for the purpose of administering the estate not already administered, shall have the same powers, and shall proceed in settling the estate in the same manner as the former executor or administrator should have had or done, and may prosecute or defend any action commenced by or against the former executor or administrator, and may have ex-

execution on any judgment recovered in the name of such former executor or administrator.

**SEC. 191. [Revocation of administration.]**—If, after the granting of letters of administration by any probate court on the estate of any deceased person, as if he had died intestate, a will of such deceased person shall be duly proved and allowed by such court, the first administration shall, by decree of said court, be revoked, and the powers of the administrator shall cease, and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration within such time as the court shall direct.

**SEC. 192. [Rights of executor.]**—The executor of the will shall, in such case, be entitled to demand, sue for, and collect all the goods, chattels, rights and credits of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

**SEC. 193. [Acts of executor valid.]**—All acts of an executor or administrator as such, before the revocation of his letters testamentary, or of administration, shall be as valid to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

**SEC. 194. [Joint bond.]**—When two or more persons shall be appointed administrators on any estate, the judge of probate may take a separate bond from each, with sureties, or a joint bond, with sureties from all.

**SEC. 195. [Proceedings on appointment of administrator.]**—When application shall be made to the judge of probate for the appointment of an administrator of an intestate estate, or for letters of administration with the will annexed, he shall cause the notice of the same, and of the time and place of the hearing thereof, to be given by personal service on all persons interested, or by publication under an order of such court in such newspaper printed in this state as he may direct; and when, upon such hearing, the grant of such administration shall be refused for any cause, the court of probate may, if all the parties interested were duly notified of such hearing, proceed to take the allegations and proofs to determine the party entitled to such administration, and to grant administration without further notice. [Amended, G. S. 813.]

#### INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

**SEC. 196. [Inventory.]**—Every executor or administrator shall, within three months after his appointment, make, and return under oath, into the probate court from which he received his letters, a true inventory of the real estate, and of all the goods, chattels, rights and credits of the deceased, which shall have come into his possession or knowledge; excepting only, that an executor, or administrator with the will annexed, who shall be a residuary legatee, and shall have given bond to pay all the debts and legacies as provided by law, shall not be required to return an inventory. *Provided, however,* That the inventory of a special administrator shall be made out and returned as aforesaid within two weeks after his appointment. [Amended, G. S. 814.]

**SEC. 197. [Appraisement.]**—The personal estate and effects comprised in the inventory, shall be appraised by two or more disinterested persons of the county, who shall be appointed by the probate court. The judge of probate may at any time appoint new appraisers to take the place of such as have already been appointed; and when a vacancy occurs by the neglect or refusal of an appraiser to serve, or by absence, death, or removal from the state, a new appraiser may in like manner be appointed. [Amended, G. S. 814.]

**SEC. 198. [Order appointing appraisers.]**—When appraisers shall be appointed by a justice of the peace, he shall issue an order to them in substance as follows:

State of Nebraska —County, ss. To —, of —, in said County:

You are hereby appointed to appraise, on oath, the estate and effects of —, late of —, deceased, which may be in said county, and when you have performed that

service you are required to deliver this order, and your doings in pursuance thereof, to —, executor or administrator, as the case may be, of said deceased.

Given under my hand this — day of —, in the year A. D. 18—.

—, *Justice of the Peace.*

**SEC. 199. [Duty of appraisers.]**—The appraisers shall set down opposite to each item in such inventory, distinctly, in figures, the value thereof in money, and deliver the same certified by them, together with their appointment, if made by a justice of the peace, to the executor or administrator.

**SEC. 200. [Separate inventory.]**—A separate and distinct inventory and appraisement shall be made and returned as aforesaid, of all the household furniture and other personal property which may be allowed to the widow pursuant to the provisions of this chapter, but the same shall not be considered assets in the hands of the executors or administrators.

**SEC. 201. [Liability of estate.]**—The personal estate of the deceased which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits in the hands of the executor or administrator shall not be sufficient to pay the debts of the deceased and the expenses of administration, the whole of his real estate except the widow's dower, or so much thereof as may be necessary, may be sold for that purpose, by the executor or administrator, after obtaining license therefor in the manner provided by law.

**SEC. 202. [Executor has right of possession.]**—The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents, issues and profits of the real estate, until the estate shall have been settled, or until delivered over, by order of the probate court, to the heirs or devisees, and shall keep in good tenantable repair, all houses, buildings and fences thereon which are under his control.

**SEC. 203. [Citation.]**—If any executor or administrator, heir, legatee, creditor or other person interested in the estate of any deceased person, shall complain to the judge of probate, on oath, that any person is suspected to have concealed, embezzled, carried away, or disposed of any money, goods or chattels of the deceased, or that such person has in his possession or knowledge any deeds, conveyances, bonds, contracts or other writings which contain evidence of or tend to disclose the right, title, interest or claim of the deceased to any real or personal estate, or any claim or demand, or any last will and testament of the deceased, the said judge may cite such suspected person to appear before the court of probate, and may examine him on oath upon the matter of such complaint.

**SEC. 204. [Commitment.]**—If the person so cited shall refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail of the county, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court.

**SEC. 205. [Citation on complaint of executor.]**—The judge of probate, upon the complaint on oath of any executor or administrator, may cite any person who shall have been entrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts or other papers belonging to such estate which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon, and if the person so cited shall refuse to appear and render such account, the court may proceed against him as provided in the preceding section.

**SEC. 206. [Compromise with debtor.]**—When any debtor of any deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compromise with such debtor, and give him a discharge, upon receiving a fair and just dividend of his effects.

**SEC. 207. [Executor may foreclose mortgage.]**—When any mortgagee of real estate, or any assignee of such mortgagee, shall die without having foreclosed the right of redemption, all the interest in the mortgaged premises conveyed by such mortgage, and the debt secured thereby, shall be considered as personal assets in the hands of the executor or administrator, and he may foreclose the same and have any other remedy for the collection of such debt which the deceased would have had if living, or may continue any proceedings commenced by the deceased for that purpose.

**SEC. 208. [Same—Redemption.]**—In case of the redemption of any such mortgage, or the sale of the mortgaged premises, by virtue of a power of sale contained therein, or otherwise, the money paid thereon shall be received by the executor or administrator, and he shall thereupon give all necessary releases and receipts; and if, upon a sale of the mortgaged premises, the same shall be bid in by the executor or administrator for such debt, he shall be seized of the same for the same persons, whether creditors, next of kin or others, who would have been entitled to the money if the premises had been redeemed or purchased at such sale by some other person.

**SEC. 209. [Sale of estate.]**—Any real estate so held by an executor or administrator, or which may be purchased by him as such, upon a sale on execution, for the recovery of a debt due the estate, may be sold for the payment of debts or legacies and the charges of administration, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor in the manner provided by law.

**SEC. 210. [Distribution of estate if not sold.]**—If any land so held by an executor or administrator, as mentioned in the preceding section, shall not be sold by him as therein provided, it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the deceased; and if, upon such distribution, the estate shall come to two or more persons, partition thereof may be made between them in like manner as if it were real estate which the deceased held in his lifetime.

**SEC. 211. [Powers of executor.]**—When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall, in his lifetime, have conveyed any real estate or any right or interest therein, with the intent to defraud his creditors, or to avoid any right, debt or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment, any proper action or suit at law or in chancery, for the recovery of the same, and may recover, for the benefit of the creditors, all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover for all goods, chattels, rights or credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

**SEC. 212. [Same.]**—No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the probate court shall judge just and equitable.

**SEC. 213. [Real estate may be sold.]**—All real estate so recovered as provided in the two hundred and eleventh section of this chapter, shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court, and the proceeds of all goods, chattels, rights and credits received as aforesaid, shall be appropri-

SECS. 207-208. Cited 2 Neb. 26.

**SEC. 211.** The creditors of an insolvent estate may maintain an action against the executor who is also the fraudulent mortgagee, to have a chattel mortgage declared void on the ground that it was executed in fraud of such creditors. And if it appear that the executor is insolvent and is about to sell the property under the mortgage, an injunction to restrain the sale will issue. 6 Neb. 503.

ated in payment of the debts of the deceased, in the same manner as other debts in the hands of the executor or administrator.

PAYMENT OF DEBTS AND LEGACIES OF DECEASED PERSONS.

SEC. 214. [**Examination of claims—Commission.**].—When letters testamentary or of administration shall be granted by any probate court, it shall be the duty of the probate judge to receive, examine, adjust and allow all claims and demands of all persons, against the deceased, giving the same notice as is required to be given by commissioners in this subdivision; *Provided*, That the parties interested, or either of them, shall have the right to demand that two or more suitable persons be appointed commissioners, in which case, said commissioners shall receive, examine and adjust all claims and demands against the estate, as provided for in this subdivision, except when the value of the whole estate, exclusive of the furniture and other personal property allowed to the widow, shall not exceed one hundred and fifty dollars, and shall be assigned for the support of the widow and children, as provided by law, in which case such assignment shall be deemed a full and final administration and bar to all claims against the estate. When such commissioners shall be appointed, it shall be their duty to appoint convenient times and places when and where they will meet for the purpose of examining and allowing claims; and within sixty days after their appointment they shall give notice of the times and places of their meeting, and of the time limited for creditors to present their claims, by posting a notice thereof in four public places in the same county, and by publishing the same at least four weeks successively in some newspaper printed in this state, or in any other manner which the court may direct.

SEC. 215. [**Notice.**].—The judge of probate, in the commission issued to the commissioners, shall designate the paper in which such notice shall be published and the number of places in the several towns in which it shall be required to be posted, or other mode of notifying which he may deem necessary and proper.

SEC. 216. [**Filling vacancy.**].—If any commissioner appointed by the probate court shall at any time die, remove out of the state, refuse, or become in any other way incapacitated to perform the duties of his appointment, the court may appoint another commissioner in his place, and no further notice of the meetings of the commissioners shall be required in consequence of such appointment.

SEC. 217. [**Time allowed to present claims.**].—The probate court shall allow such time as the circumstances of the case shall require, for the creditors to present their claims to the commissioners for examination and allowance, which time shall not, in the first instance, exceed eighteen months, nor be less than six months, and the time allowed shall be stated in the commission.

SEC. 218. [**Same.**].—The probate court may extend the time allowed to creditors to present their claims, as the circumstances of the case may require; but not so that the whole time shall exceed two years from the time of appointing such commissioners.

SEC. 219. [**Renewal of commission.**].—On the application of a creditor who has failed to present his claim, if made within six months from the time previously limited, the court may, for good cause shown, renew the commission, and allow further time, not exceeding three months, for the commissioners to examine such claims, in which case the commissioners shall personally notify the parties of the time and place of hearing, and, as soon as may be, make return of their doings to the probate court.

SEC. 220. [**Judge may examine claim.**].—In the case mentioned in the preceding section, if the judge of probate shall think proper, instead of renewing the commission he may appoint a time and place for examination and adjustment of such claim before himself, and cause personal notice thereof to be given to the

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SEC. 214. A judgment rendered by a foreign state in an action wherein personal service is had on the defendant, who appears and answers, but dies before the trial and his administrator defends, is final and conclusive and a charge upon his estate here 8 Nov. 356.



parties, and in that case he shall proceed to examine and adjust such claim in like manner as the same might have been done by such commissioners.

**SEC. 221. [Set-off].**—When a creditor against whom the deceased has had claims, shall present a claim to the commissioners, the executor or administrator shall exhibit the claim of the deceased in off-set to the claims of the creditor, and the commissioners shall ascertain and allow the balance against or in favor of the estate, as they shall find the same to be, but no claim barred by the statute of limitation shall be allowed by the commissioners in favor of or against the estate as a set-off or otherwise.

**SEC. 222. [Oath of commissioners].**—The commissioners shall be sworn to the faithful discharge of their duties, and any one of them shall be authorized to administer oaths to parties and witnesses, when the same shall be required or proper for the investigation and trial of questions before them.

**SEC. 223. [Report].**—At the expiration of the time limited, or as soon thereafter as they shall have time to complete the hearing of the claims presented, the commissioners shall make up a report of their doings to the probate court, embracing lists of the claims presented or exhibited in off-set, and stating how much was allowed and how much was disallowed, together with the final balance, whether in favor of the creditor or the estate, and the report shall state particularly the manner of giving notice to the claimants.

**SEC. 224. [Powers of commission].**—The commissioners shall have power to try and decide upon all claims which by law survive against or in favor of executors and administrators, except claims for the possession or title of real estate, and may examine and allow all demands at their present value which may be payable at a future day, including claims payable in specific articles, and may set off such demands in the same manner in favor of the estate.

**SEC. 225. [Powers of executor].**—Nothing in the preceding section shall be construed to prevent any executor or administrator from paying any debt which shall be payable at a future day according to the terms and at the time specified in the contract.

**SEC. 226. [Claims barred].**—Every person having a claim against a deceased person proper to be allowed by the judge or commissioners, who shall not, after the giving of notice as required in the two hundred and fourteenth section of this chapter, exhibit his claim to the judge or commissioners, within the time limited by the court for that purpose, shall be forever barred from recovering such demand or from setting off the same in any action whatever. [Amended, G. S. 820.]

**SEC. 227. [Limitation of actions].**—No action shall be commenced against the executor or administrator, except actions to recover the possession of real or personal property, and actions for relief other than for the recovery of money only, and such actions as are permitted in this chapter; nor shall any attachment or execution be issued against the estate of the deceased until the expiration of the time limited by the court for the payment of the debts, except in the actions mentioned in this section, and in the cases provided for in section two hundred and seventy-two of this chapter. [Amended, G. S. 820.]

**SEC. 228. [Actions pending at time of death].**—All actions and suits which may be pending against a deceased person at the time of his death, may, if the cause of action survives, be prosecuted to final judgment; and the executor or administrator may be admitted to defend the same, and if the judgment shall be rendered against the executor or administrator, the court rendering it shall certify the same to the probate court, and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate.

**SEC. 229. [Actions by executor].**—Nothing in this chapter shall be construed to prevent an executor or administrator, when he shall think it necessary,

**SEC. 227.** A mortgagee, after death of the mortgagor, may foreclose his mortgage, and cannot be compelled to relinquish his lien and share in the general assets of the estate. 9 Neb. 60. The mortgagee is not barred by a failure to present it for allowance as a claim against the estate, but unless it is presented the mortgagee is confined to the mortgaged property and cannot share in the general assets. 5 Neb. 504.

**SEC. 228.** Cited 7 Neb. 266.

from commencing and prosecuting any action against any other person, or from prosecuting any action commenced by the deceased in his lifetime, for the recovery of any debt or claim, to final judgment, or from having execution on any judgment.

SEC. 230. [**Set-off.**].—In such case the defendant may set off any claim he may have against the deceased, instead of presenting it to the commissioners, and all mutual claims will be set off in such action, and if final judgment shall be rendered in favor of the defendant, the same shall be certified, by the court rendering it, to the probate court, and the judgment shall be considered the true balance.

SEC. 231. [**When intestate is a joint contractor.**].—When two or more persons shall be indebted on any joint contract, or upon a judgment founded on a joint contract, and either of them shall die, his estate shall be liable therefor, and it may be allowed by the commissioners as if the contract had been joint and several, or as if the judgment had been against him alone; and the other parties to such joint contract may be compelled to contribute or pay the same, if they would have been liable to do so upon payment thereof by the deceased.

SEC. 232. [**Fees of commissioners.**].—The commissioners provided for by this subdivision shall receive two dollars per day as compensation for every day of actual service.

SEC. 233. [**Appeals.**].—Any executor, administrator or creditor may appeal from the decision of the judge or commissioners to the district court for the same county, if application for such appeal be made in writing and filed in the probate court, within ten days after the entry of the decision in the records of the probate court. [Amended, G. S. 921.]

SEC. 234. [**Appeal bond.**].—In case of an appeal by a claimant against the estate, he shall, within ten days, give a bond to the adverse party, with sufficient security, to be approved by the probate judge, and filed in his office, with a condition that he shall prosecute his appeal to effect and without unnecessary delay, and pay all damages and costs which may be awarded against him on the appeal. No executor or administrator shall be required to enter into bond to entitle him to appeal. [Amended, G. S. 921.]

SEC. 235. [**Appeals not allowed.**].—No appeal shall be allowed from the decision of the judge or commissioners except in the following cases: I. When such judge or the commissioners shall disallow any claim or set-off in whole or in part, to the amount of twenty dollars. II. When the judge or commissioners shall allow any claim or set-off in whole or in part, and the sum allowed being objected to shall amount to twenty dollars. [Amended, G. S. 921.]

SEC. 236. [**Notice of hearing appeal.**].—The party appealing shall, after the appeal is taken, give notice of such appeal and of the hearing thereof in the district court, by service of notice on the adverse party, or if personal service cannot be had, by causing the same to be published for two successive weeks in some weekly newspaper of general circulation in the county, which service of publication must be complete at least ten days before the next term of such court, otherwise the notice must be given for the next succeeding term thereafter. [Amended, G. S. 922.]

SEC. 237. [**Transcript.**].—The party appealing shall, on or before the first day of the term of said court next after the expiration of the time within which notice might have been given as required in the last preceding section, procure and file in the district court a certified copy of the bond, if any, given on appeal, and of the record of the allowance or disallowance appealed from, and of the claim or set-off filed, together with the proper evidence that notice has been given as aforesaid to the adverse party. [Id.]

SEC. 238. [**Trial in district court.**].—The district court shall proceed to a trial and determination of the case in like manner as upon appeals brought

SEC. 233. An order allowing a claim against an estate may be reviewed on error in the district court. 10 Neb. 332.

SEC. 234. Where a party was prevented from taking the appeal within the ten days on account of the absence of the judge from the county, there being no laches on his part, he was allowed to perfect the appeal and have a new trial in the district court. 7 Neb. 296.

from the judgments of justices of the peace; and such court may direct an issue to be made up between the parties when it shall be deemed necessary; and questions of law may be carried to the supreme court, and costs may be allowed or denied in the discretion of the court. [Id.]

SEC. 239. [**Decision and judgment.**].—The final decision and judgment in cases so appealed shall be certified to the probate court, and proceedings shall be had thereon necessary to carry the judgment of the appellate court into execution. [Id.]

SEC. 240. [**Failure to perfect appeal.**].—If any claimant, appealing on account of the disallowance of his claim by the judge or commissioners, shall fail to enter such appeal in the district court as herein required, or shall in any way fail to prosecute his action on his claim in the district court, such court may dismiss the appeal, or a certificate may be filed in the probate court, as the case may require, in like manner as in cases of appeals from judgments of justices of the peace, and thereupon such claim shall be forever barred, and the probate court shall proceed in the same manner as if such appeal had never been taken. [Id.]

SEC. 241. [**Same.**].—If the person objecting to a claim and appealing on account of the allowance thereof, shall neglect to prosecute his appeal as aforesaid, the court to which the appeal shall be taken may dismiss the appeal, or a certificate may be filed as aforesaid, as the case may require, and thereupon the probate court may proceed in the same manner as if the appeal had never been taken, or on motion of the adverse party, and upon his producing an attested copy of the record and papers showing such appeal, the district court shall cause the appeal to be docketed and affirm the allowance appealed from, and enter judgment for costs against the appellant. [Id.]

\* SEC. 242. [**Appeals by persons interested in estate.**].—When an executor or administrator declines to appeal from the decision of the judge or commissioners, any person interested in the estate as creditor, devisee, legatee or heir, may appeal from such decision by filing a written application therefor, within ten days after the expiration of the time allowed to such executor or administrator for the filing of his application as hereinbefore provided; and the same proceedings shall be had in the name of the executor or administrator as if the appeal had been taken by him; *Provided*, That the person appealing in such case shall give bond, to be approved by the judge of probate and filed in his office, as well to secure the estate from damages and costs, as to secure the intervening damages and costs to the adverse party; and actions upon such bond may be maintained by the party sustaining damages thereby. [Amended, G. S. 923.]

SEC. 243. [**Report of commissioners.**].—The said commissioners shall file with their report all the claims and off-sets presented to and passed upon by them, and in the hearing and determination upon such claims and off-sets, the judge or commissioners shall be governed by the same rules of evidence as prescribed in civil actions in the district court, and depositions may be taken, filed and used in evidence before the probate court, as in actions in the district court; and such depositions shall be transmitted to the district court with the transcript used in cases taken by appeal to said court, if such depositions are sought to be used upon the trial of such cause in the district court. [Id.]

#### LIMITATION OF TIME FOR PAYING DEBTS.

SEC. 244. [**Court to fix time for payment.**].—The probate court, at the time of granting letters testamentary or letters of administration, shall make an order allowing to the executor or administrator a time for disposing of the estate and paying the debts and legacies of the deceased person, which time shall not, in the first instance, exceed one year and six months.

SEC. 245. [**Extension of time.**].—The probate court may, on application of the executor or administrator, from time to time, as the circumstances of the estate may require, extend the time for paying debts and legacies, not exceeding six months at a time, nor so that the whole time allowed to the original executor or administrator shall exceed three years.

**SEC. 246. [Notice on application for extension of time.]**—When an executor or administrator shall make application to have the time for paying debts and legacies extended beyond one year and six months from the time of granting letters testamentary or of administration, the probate court shall appoint a time for hearing and deciding on such application, and shall cause notice of application and of the time and place of hearing to be given to all persons interested, by publication, three weeks successively, in some newspaper, to be designated by the court, and no such order extending the time shall be granted unless such notice shall have been previously given.

**SEC. 247. [Appointment of new administrator.]**—When an executor or administrator shall die, be removed or become incapable of discharging his trust, and a new administrator of the same estate shall be appointed, the probate court shall, when necessary, make an order allowing to such new administrator a time for disposing of the estate unadministered, and paying the debts and legacies, which time shall not, in the first instance, exceed one year from the time such new administrator shall be appointed; but such time may be extended in like manner and upon like notice as required in case of the original executor or administrator; and nothing contained in this subdivision shall be construed to take away the liability of an executor or administrator to make immediate payment when demanded, upon a decree for the distribution of assets among creditors, legatees or heirs at law. [Amended, G. S. 324.]

**OF THE DISTRIBUTION OF ASSETS AMONG THE CREDITORS, AND OF INSOLVENT ESTATES.**

**SEC. 248. [Sufficient assets, debts to be paid.]**—If, after the report of the commissioners and ascertaining the claims against any estate, it shall appear that the executor or administrator has in his possession sufficient to pay all the debts, he shall pay the same in full within the time limited or appointed for that purpose.

**SEC. 249. [Order of payment of debts.]**—If the assets which the executor or administrator may have received and which can be appropriated to the payment of debts, shall not be sufficient, he shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order: *First.* The necessary funeral expenses. *Second.* The expenses of the last sickness. *Third.* Debts having a preference by the laws of the United States. *Fourth.* Debts due to other creditors.

**SEC. 250. [Same.]**—If there shall not be assets enough to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

**SEC. 251. [Decree.]**—After the return of the report of the commissioners, and at or before the expiration limited for the payment of debts, the probate court shall make an order or decree for the payment of the debts and the distribution of the assets which may have been received by the executor or administrator, at the time fixed for that purpose, among the creditors, as the circumstances of the estate shall require, according to the provisions of this subdivision.

**SEC. 252. [Suspension of decree in case of appeal.]**—If an appeal shall have been taken from the decision of the commissioners, and shall remain undetermined, the probate court may suspend the decree for the payment of debts mentioned in the preceding section, or may order a distribution among the creditors whose claims have been allowed, leaving in the hands of the executor or administrator sufficient assets to pay the claim which may have been disputed and appealed.

**SEC. 253. [Settlement of disputed claim.]**—When the disputed claim shall have been finally settled, the probate court shall order the same to be paid out of the assets retained, to the same extent and in the same proportion as the claims of other creditors.

**SEC. 249.** Payment of taxes comes under the fourth class and a county treasurer cannot distrain personal property for taxes due from deceased in his life time. 8 Neb. 185.

**SEC. 254. [Further decree.]**—If the whole of the debts shall not have been paid by the first distribution, and if the whole assets shall not have been distributed, or if other assets shall afterwards come to the hands of the executor or administrator, the probate court may, from time to time, according to the circumstances of the case, make further decree for the distribution of assets.

**SEC. 255. [Liability of executor.]**—Whenever a decree shall have been made by the probate court, for the distribution of the assets among the creditors, the executor or administrator of the estate, after the time of payment shall arrive, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debts, or he shall be liable on his bond, and the same may be put in suit on the application of the creditor whose debt or dividend shall not be paid as above mentioned.

**SEC. 256. [Notice to creditors.]**—When the time for paying the debts of a deceased person shall be finally limited by order of the probate court or by the expiration of the time allowed for that purpose, whether the estate shall be insolvent or not, the probate court may, on the application of the executor or administrator, by an order for that purpose, cause notice to be given to the creditors of the time appointed or limited for the payment of such debts, which notice shall be given by publishing the same at least three weeks successively in some paper to be designated by the court, or in such other manner as the court may direct.

**SEC. 257. [Claims barred.]**—If, after notice shall have been given, as provided in the preceding section, any creditor shall neglect to demand from the executor or administrator, his debt or the dividend thereon within two years from the time so limited for the payment of the debts, or if the notice shall have been given after such time, within two years from the last publication, the claim of such creditor shall be forever barred.

#### CONTINGENT CLAIMS.

**SEC. 258. [Presentation and proof.]**—If any person shall be liable as security for the deceased, or have any other contingent claim against his estate, which cannot be proved as a debt before the commissioners, or allowed by them, the same may be presented, with the proper proof, to the probate court or to the commissioners, who shall state the same in their report, if such claim was presented to them.

**SEC. 259. [Retention of funds to pay.]**—If the court shall be satisfied, from the report of the commissioners, or by the proof exhibited, said court may order the executor or administrator to retain in his hands sufficient to pay such contingent claim, when the same shall become absolute; or, if the estate shall be insolvent, sufficient to pay a proportion equal to the dividends of other creditors.

**SEC. 260. [When claim becomes absolute.]**—If such contingent claim shall become absolute, and shall be presented to the probate court, or to the executor or administrator, at any time within two years from the time limited for other creditors to present their claims to the commissioners, it may be allowed by the probate court upon due proof, or it may be proved before the commissioners already appointed or before others to be appointed for that purpose, in the same manner as if presented for allowance before the commissioners had made their report; and the persons interested shall have the same right of appeal as in other cases.

**SEC. 261. [Same.]**—If such contingent claim shall be allowed, as mentioned in the preceding section, or established on appeal, the creditors shall be entitled to receive payment to the same extent as other creditors, if the estate retained by the executor or administrator shall be sufficient for that purpose; but if the claim shall not be finally established, as provided in the preceding section, or if the assets retained in the hands of the executor or administrator, shall not be wholly exhausted in payment of such claim, such assets, or the residue of them, shall be disposed of by order of the probate court, to the persons entitled to the same according to law.

**SEC. 262. [Same.]**—If the claim of any person shall accrue or become absolute at any time after the time limited for creditors to present their claims, the person having such claim may present it to the probate court, and prove the same at any time within one year after it shall accrue or become absolute; and if established in the manner provided in this subdivision, the executor or administrator shall be required to pay it, if he shall have sufficient assets for that purpose, and shall be required to pay such part as he shall have assets to pay, and if real or personal estate shall afterwards come to his possession, he shall be required to pay such claim, or such part as he may have assets sufficient to pay, not exceeding the proportion of the other creditors, in such time as the probate court may prescribe.

**SEC. 263. [Recovery from heirs, etc.]**—When a claim shall be presented within one year from the time when it shall accrue, and be established, as mentioned in the preceding section, and the executor or administrator shall not have sufficient to pay the whole of such claim, the creditor shall have the right to recover such part of his claim as the executor or administrator has not assets to pay, against the heirs, devisees or legatees, who shall have received sufficient real or personal property from the estate.

**SEC. 264. [Action against executor.]**—If any action shall be commenced against an executor or administrator on such claim as mentioned in section two hundred and sixty-two, and for the payment of which sufficient assets shall not have been retained, as before provided, the executor or administrator may give notice, under his plea to such action, that he has fully administered the estate which has come to his possession or knowledge.

**SEC. 265. [Judgment.]**—If it shall appear on the trial of such action, that the defendant had fully administered at the time the claim was presented, and had no assets which could lawfully be appropriated for that purpose, he shall be discharged, and shall have judgment for his costs; but if it shall be found that he had assets sufficient to pay only a part of such claim, judgment shall be rendered against him for such sum only as shall be equal to the amount of assets in his hands.

**SEC. 266. [Liability of heirs, etc.]**—When the heirs, devisees, or legatees shall have received real or personal estate, and shall be liable for any debts, as mentioned in this subdivision, they shall be liable in proportion to the estate they may have respectively received; and the creditor may have any proper action or suit in law or equity, and shall have a right to recover his claim against a part or all of such heirs, devisees or legatees, to the amount of the estate they may have respectively received; but no such action shall be maintained unless commenced within one year from the time the claim shall be allowed or established.

**SEC. 267. [Contribution among legatees.]**—If, by the will of the deceased, any part of his estate, or any devisees or legatees, shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves only, according to the will.

**SEC. 268. [New parties to action.]**—If all the persons liable for the payment of any such debt shall not be included in any such action or suit as defendants, the suit or action shall not thereby be in any way dismissed or barred, but the court before which it shall be pending may order any other parties brought in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

**SEC. 269. [Issues, how tried.]**—If more than one person shall be liable, as aforesaid, and the creditor shall bring a suit in chancery, against all or a part of the persons so liable, and the persons liable shall dispute the debt or the amount claimed, the court of chancery may order an issue to be formed, and direct that the amount may be ascertained by a jury in the district court of the county in which the estate is settled; and the court of chancery shall ascertain and determine how much each is liable to pay, and may award execution therefor.

**SEC. 270. [Estate of heir, devisee, etc., liable.]**—If any of the heirs,

devisees or legatees shall die without having paid his just share of the debts, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable, if living.

**SEC. 271. [Liability of others.]**—When any of the heirs, devisees or legatees shall pay more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same, as is provided in the cases of devisees and legatees in this chapter.

**SEC. 272. [Actions against executor—Lien of creditor.]**—If the giving of notice for the examination and allowance of claims against the estate, before the judge or commissioners, shall in any case be omitted for the period of one year after the granting of letters testamentary or administration, no person having any contingent or other lawful claim against a deceased person, shall thereby be prevented from prosecuting the same against the executors, administrators, heirs, devisees or legatees, as the same may be, who shall have received real or personal property from the estate; and in all cases a creditor having a lien upon the real or personal estate of the deceased by judgment, execution or attachment, previous to his death, may proceed to enforce such lien, the same as if such death had not occurred. [Amended, G. S. 329.]

**SEC. 273. [Limitation.]**—In no other case, except such as are expressly provided for in this chapter, shall any action be commenced or prosecuted against an executor or administrator; nor shall any writ of attachment or execution issue against such executor or administrator, or against the estate of the deceased in his hands, during the time allowed him for the payments, except in the case provided for in the preceding section.

#### RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

**SEC. 274. [Liability of executor.]**—Every executor and administrator shall be chargeable in his account with the whole of the goods, chattels, rights and credits of the deceased, which may come to his possession, also, with all the proceeds of the real estate which may be sold for the payment of debts and legacies, and with all the interest, profit and income that shall in any way come to his hands from the estate of the deceased.

**SEC. 275. [Personal estate.]**—Every executor and administrator shall account for the personal estate of the deceased as the same shall be appraised, except as provided in the following section.

**SEC. 276. [Not profit by increase, etc.]**—An executor or administrator shall not make profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the personal estate, and he shall account for the excess when he shall sell any part of the personal estate for more than the appraisal, and if he shall sell any for less than the appraisal he shall not be responsible for the loss, if it shall appear to be beneficial to the estate to sell it.

**SEC. 277. [Sale of personalty.]**—The probate court, on the application of the executor or administrator may, at any time, order the personal estate to be sold at private sale or at public auction, when it shall appear to be necessary for the purpose of paying debts or legacies, or expenses of administration, or for the preservation of the property, or when it shall be requested by all the heirs residing in this state; or the court may order such personal estate to be sold, either at private sale or public auction, as the executor or administrator may find most beneficial. If the order be to sell at auction, the probate court shall direct the mode of giving notice of the time and place of sale.

**SEC. 278. [Account.]**—When the executor or administrator shall sell personal estate under an order of the probate court, he shall account for the same at the price for which it shall be sold.

**SEC. 272.** A mortgagee cannot be compelled to relinquish his lien and share in the general assets of the estate. 9 Neb. 60.

**SEC. 274.** If an executor fraudulently invests assets of the estate in land, taking the title in his own name and never accounting for the same in his reports, a creditor of the deceased has an equitable lien thereon for the amount due him. 4 Neb. 60.

**SEC. 262. [Same.]**—If the claim of any person shall accrue or become absolute at any time after the time limited for creditors to present their claims, the person having such claim may present it to the probate court, and prove the same at any time within one year after it shall accrue or become absolute; and if established in the manner provided in this subdivision, the executor or administrator shall be required to pay it, if he shall have sufficient assets for that purpose, and shall be required to pay such part as he shall have assets to pay, and if real or personal estate shall afterwards come to his possession, he shall be required to pay such claim, or such part as he may have assets sufficient to pay, not exceeding the proportion of the other creditors, in such time as the probate court may prescribe.

**SEC. 263. [Recovery from heirs, etc.]**—When a claim shall be presented within one year from the time when it shall accrue, and be established, as mentioned in the preceding section, and the executor or administrator shall not have sufficient to pay the whole of such claim, the creditor shall have the right to recover such part of his claim as the executor or administrator has not assets to pay, against the heirs, devisees or legatees, who shall have received sufficient real or personal property from the estate.

**SEC. 264. [Action against executor.]**—If any action shall be commenced against an executor or administrator on such claim as mentioned in section two hundred and sixty-two, and for the payment of which sufficient assets shall not have been retained, as before provided, the executor or administrator may give notice, under his plea to such action, that he has fully administered the estate which has come to his possession or knowledge.

**SEC. 265. [Judgment.]**—If it shall appear on the trial of such action, that the defendant had fully administered at the time the claim was presented, and had no assets which could lawfully be appropriated for that purpose, he shall be discharged, and shall have judgment for his costs; but if it shall be found that he had assets sufficient to pay only a part of such claim, judgment shall be rendered against him for such sum only as shall be equal to the amount of assets in his hands.

**SEC. 266. [Liability of heirs, etc.]**—When the heirs, devisees, or legatees shall have received real or personal estate, and shall be liable for any debts, as mentioned in this subdivision, they shall be liable in proportion to the estate they may have respectively received; and the creditor may have any proper action or suit in law or equity, and shall have a right to recover his claim against a part or all of such heirs, devisees or legatees, to the amount of the estate they may have respectively received; but no such action shall be maintained unless commenced within one year from the time the claim shall be allowed or established.

**SEC. 267. [Contribution among legatees.]**—If, by the will of the deceased, any part of his estate, or any devisees or legatees, shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves only, according to the will.

**SEC. 268. [New parties to action.]**—If all the persons liable for the payment of any such debt shall not be included in any such action or suit as defendants, the suit or action shall not thereby be in any way dismissed or barred, but the court before which it shall be pending may order any other parties brought in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

**SEC. 269. [Issues, how tried.]**—If more than one person shall be liable, as aforesaid, and the creditor shall bring a suit in chancery, against all or a part of the persons so liable, and the persons liable shall dispute the debt or the amount claimed, the court of chancery may order an issue to be formed, and direct that the amount may be ascertained by a jury in the district court of the county in which the estate is settled; and the court of chancery shall ascertain and determine how much each is liable to pay, and may award execution therefor.

**SEC. 270. [Estate of heir, devisee, etc., liable.]**—If any of the heirs,



be cited by the probate court to render account of his administration, at any time after the expiration of six months from the time of his receiving letters testamentary, or of administration, when it is made to appear to the satisfaction of the probate court by the application, under oath, of any party interested in the estate, that there are assets in the hands of such executor or administrator, the whole or any portion of which ought to be immediately decreed to be paid to such applicant. Every executor or administrator failing to render his account within one year as required by section two hundred and eighty-two of this chapter, may be cited by such court to render such account upon the application, under oath, of any party interested in the estate. When a new administrator shall be appointed in the place of any former executor or administrator of the same estate, the probate court shall have power upon the application of such new administrator, to cite such former executor or administrator to render account of his administration; and such order or decree thereupon, as may be proper, shall be made by such court, requiring such former executor or administrator to turn over and deliver to such new administrator any estate or effects remaining in the hands of such former executor or administrator unadministered. When an executor or administrator, after being duly cited by the probate court, shall neglect to render his account, or shall render a false account, he shall be liable on his bond for all damages that may accrue, and such court may also proceed against him as for a contempt, in like manner as in cases in other courts of record. An executor or administrator shall not be cited as herein provided, when there shall be in force an order of such court, giving him permission to delay the rendering of his account. [Amended, G. S. 832.]

**SEC. 286. [Costs.]**—When costs are allowed in any case against an executor or administrator, execution shall not issue against the estate of the deceased in his hands therefor, but shall be awarded against him as his own debt; and the amount paid by him shall be allowed in his administration account, unless it shall appear that the suit or proceeding in which the costs shall be taxed, shall have been prosecuted or resisted without just cause.

**SEC. 287. [Notice.]**—Before the administration account of any executor or administrator shall be allowed, notice shall be given to all persons interested, of the time and place of examining and allowing the same, and such notice may be given personally to such persons as the probate court shall judge to be interested, or by public notice under the direction of the court.

#### PARTITION AND DISTRIBUTION OF ESTATES.

**SEC. 288. [Allowance to children.]**—Before any partition or division of any estate among the heirs, devisees, or legatees, as provided in this subdivision, the probate court shall make an allowance for the necessary expenses of the support of any children of the deceased under seven years of age; and it shall be the duty of the executor or administrator to retain in his hands sufficient estate for that purpose, except when some provision is made by will for their support. [Amended, G. S. 833.]

**SEC. 289. [Assignment of estate.]**—After the payment of the debts, funeral charges and the expenses of administration, and after the allowances made for the expense of the maintenance of the family of the deceased and for the support of the children under seven years of age, and after the assignment to the widow of her dower, and of her share in the personal estate, or when sufficient assets shall be reserved in the hands of the executor or administrator for the above purposes, the county court shall, by a decree for that purpose, assign the residue of the estate, if any, to such other persons as are by law entitled to the same. [Amended and took effect Mar. 1, 1881.]

**SEC. 290. [Decree.]**—In such decree, the court shall name the persons, and the proportions or parts to which each shall be entitled, and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same.

**SEC. 291. [Same—Bond from heirs, etc.]**—Such decree may be made on the application of the executor or administrator or of any person interested; but no heir, devisee or legatee shall be entitled to a decree for his share until payment of the debts and allowances and expenses mentioned in the preceding section shall have been made or provided for, unless he shall give a bond to the county judge, with such surety or sureties as he may direct, to secure the payment of the just proportion of such heir, devisee or legatee of such debts and expenses, or such part thereof as shall remain unprovided for, and to indemnify the executor or administrator against the same. [Amended and took effect Mar. 1, 1881.]

**SEC. 292. [Partition.]**—When such estate shall consist in part of real estate, and shall descend to two or more heirs, devisees or legatees, and the respective shares shall not be separate and distinguished, partition thereof may be made as provided by law. [Amended and took effect Mar. 1, 1881.]

**SECS. 293-303. [Repealed by 1881, 235.]**

**SEC. 304. [Appeal.]**—Any person aggrieved by an order, decree, or denial of a court in pursuance of the provisions of this subdivision, may appeal therefrom as provided for in other cases.

**SEC. 305. [Confirmation.]**—The partition, when finally confirmed and established, shall be conclusive on all the heirs and devisees, and all persons claiming under them, and upon all persons interested.

**SECS. 306-310. [Repealed by 1881, 235.]**

#### PROBATE BONDS, AND THE PROSECUTION OF THEM.

**SEC. 311. [How given.]**—All bonds required by law to be taken in or by order of the probate court, shall be for such sum and with such sureties as the judge of probate shall direct, except when the law otherwise prescribes; and such bonds shall be for the security and benefit of all persons interested, and shall be taken to the judge of probate except where they are required by law to be taken to the adverse party. [R. S. 123. G. S. 337.]

**SEC. 312. [Suit on bond.]**—A suit may be brought on the bond of an executor or administrator by any creditor, when the amount due to him has been ascertained and ordered by the decree of distribution to be paid, if the executor or administrator shall neglect to pay the same when demanded.

**SEC. 313. [By whom brought.]**—Such a suit may be brought by any person as next of kin to recover his share of the personal estate, after a decree of the probate court declaring the amount due to him, if the executor or administrator shall fail to pay the same when demanded.

**SEC. 314. [Action against executor.]**—When it shall appear, on the representation of any person interested in the estate, that the executor or administrator has failed to perform his duty in any other particular than those before specified, the judge of probate may authorize any creditor, next of kin, legatee or other person aggrieved by such mal-administration, to bring an action on the bond.

**SEC. 315. [Prosecuting bond of executor.]**—Whenever an executor or administrator shall refuse or omit to perform any order or decree made by a judge of probate having jurisdiction, for rendering an account or upon a settlement of any account, or for the payment of debts, legacies, or distributive shares, or for the delivery of specific legacies, such probate judge may authorize the party aggrieved by such refusal or omission to bring an action on the bond of such executor or administrator. [Amended, G. S. 338.]

**SEC. 316. [Proceedings.]**—In all suits upon such bonds as are mentioned in this subdivision the action shall be brought in the name of the party authorized to bring the same, or in the name of the guardian of such party; and in such action the plaintiff shall be entitled to recover such damages as he may have sustained to the amount of the bond and no more; and a judgment in favor of a party for one delinquency shall not preclude the same, or another party, from an

account on the same bond for other delinquencies; but the aggregate of all the recoveries on such bond cannot exceed the amount for which the bond was given. [Amended, G. S. 338.]

SEC. 317. [**Copy of bond.**].—On the application of any person authorized by this subdivision to commence a suit on such bond, the judge of probate may grant permission to such person to prosecute the same, and shall thereupon furnish to the applicant, on his paying the legal fee, a certified copy of the bond, together with a certificate that permission has been granted to prosecute it, and the name and residence of the applicant.

SEC. 318. [**New administrator.**].—When an executor or administrator shall, for any of the causes mentioned in this chapter, be removed from his trust, or shall die, or his authority shall otherwise be extinguished, and a new administrator shall be appointed, such new administrator shall be the party entitled to bring an action upon the bond of the former executor or administrator, for any damages sustained by reason of his neglect or refusal, or the neglect or refusal of his representatives, to turn over to such new administrator, pursuant to the order or decree of the probate court, or according to law, any estate remaining unadministered. [Amended, G. S. 338.]

SEC. 319. [**New guardian.**].—When the guardian of a minor, insane person or spendthrift, shall be removed from his trust, shall die, or his authority shall otherwise be extinguished, and a new guardian shall be appointed, such new guardian shall be the party entitled to bring an action upon the bond of the former guardian, for any damages sustained by reason of his neglect or refusal, or the neglect or refusal of his representatives, to turn over to such new guardian, according to the order or decree of the probate court, or according to law, any estate of the ward. [Amended, G. S. 339.]

SEC. 320. [**Judgment.**].—When an action is brought by any creditor, heir-at-law, next of kin, or legatee, or devisee, upon the bond of any executor or administrator, as provided in this chapter, the judgment thereon, if in favor of the plaintiff, shall be deemed a satisfaction so far as such plaintiff is concerned, of so much of such order or decree, for the omission or refusal to perform which, the judgment was rendered. [Id.]

SEC. 321. [**Money collected to be assets.**].—When an action is brought pursuant to section three hundred and eighteen of this chapter, by any new administrator, the money collected therein by such new administrator shall be assets in his hands, to be administered according to law; and the probate court may make such new order or decree for the distribution thereof as the circumstances of the case may require. [Id.]

SEC. 322. [**Actions barred.**].—Whenever an action is rightfully brought by any creditor, heir-at-law, next of kin, or legatee, pursuant to the provisions of this chapter, the same shall, so far as the causes of action therein are concerned, be a bar to any other cause of action which might have accrued under the provisions of this chapter, but no farther; nor shall such bar arise from the failure of any such creditor, heir-at-law, next of kin, legatee [or] devisee to bring an action after the same shall have accrued and before the appointment of an administrator. [Id.]

#### CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SEC. 323. [**Contracts enforced.**].—When any person who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the court may make a decree, authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to execute such conveyance. [1867, 127.]

SEC. 324. [**Petition.**].—On the presentation of a petition, by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the judge shall appoint

a time and place of hearing such petition, and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least six successive weeks before such hearing in such newspaper or newspapers in this state as he may deem necessary.

SEC. 325. [**Hearing.**].—At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear before the court and defend against such petition, and the court may examine on oath the petitioner, and all others who may be produced before them for that purpose.

SEC. 326. [**Decree.**].—After a full hearing upon such petition, and examination of the facts and circumstances of such claim, if the judge of the district court shall be satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, according to the provisions of this subdivision, he shall thereupon make a decree authorizing and directing the executor or administrator to make and execute a conveyance thereof to the petitioner.

SEC. 327. [**Appeal.**].—Any person interested may appeal from such decree to the district court for the same county, as in other cases, but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the direction contained in such decree; and a certified copy of the decree shall be recorded with the deed, in the office of the register of deeds in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

SEC. 328. [**Dismissal of petition.**].—If, upon a hearing in the district court as heretofore provided, the judge shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petition without prejudice to the rights of the petitioner, who may at any time thereafter have a bill in chancery to enforce a specific performance of the contract, as hereinafter provided.

SEC. 329. [**Specific performance.**].—Whenever any person, who is bound by any contract to convey any real estate, shall die before making the conveyance the person entitled thereto may have a bill in the court of chancery to enforce a specific performance of the contract, by his heirs, devisees, or the executor or administrator of the deceased party who made such contract.

SEC. 330. [**Proceedings.**].—The court of chancery shall hear and determine every such case brought in said court, according to the course of proceedings in chancery and shall make such decree therein, as justice and equity shall require.

SEC. 331. [**Decree of conveyance.**].—If it shall appear that the complainant is entitled to have a conveyance the court may authorize and require the executor or administrator of the deceased party to convey the estate in like manner as the deceased party might and ought to have done if living; and if the heirs or devisees of such deceased person, or any of them, shall be within this state, and competent to act, the court may require them, or either of them, instead of the executor or administrator, to join in such conveyance with the executor or administrator.

SEC. 332. [**Effect of conveyance.**].—Every conveyance made in pursuance of a decree of the district court, or the court of chancery as provided in this subdivision, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself was still living and then executed the conveyance.

SEC. 333. [**Record of decree.**].—A copy of the decree for conveyance, made by the court, and duly certified and recorded in the office of the county clerk in the county where the lands lie, or a copy of the decree of the court of chancery for that purpose, duly certified by the clerk or register of that court, and recorded as aforesaid, shall give the person entitled to such conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

**SEC. 334. [Same.]**—The recording of any decree, as provided in the preceding section, shall not prevent the court making such decree from enforcing the same by any proper process according to the course of proceedings therein.

**SEC. 335. [Death of person entitled to conveyance.]**—If the person to whom the conveyance was to be made shall die before the commencement of proceedings according to the provisions of this subdivision, or before the conveyance is completed, any person who would have been entitled to the estate under him as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same, if already commenced, and the conveyance shall thereupon be so made as to vest the estate in the same persons who would have been so entitled to it, or in the executor or administrator for their benefit.

#### MISCELLANEOUS PROVISIONS.

**SEC. 336. [Death etc., of executor.]**—When an executor or administrator shall die, be removed from office, or resign, or when his letters shall be revoked during the pendency of any suit in which he is a party, the suit may be prosecuted by or against the executor or administrator appointed in his place, if any shall be appointed, in like manner as if it had originally been commenced by or against such last executor or administrator. [1869 § 1, 169. G. S. 842.]

**SEC. 337. [Foreign executor.]**—An executor or administrator duly appointed in any other state or country may commence and prosecute any action or suit in any court in this state, in his capacity of executor or administrator, in like manner and under like restrictions as a non-resident may be permitted to sue. [Id. § 2.]

**SEC. 338. [Appeal by executor, no bond required.]**—Every executor or administrator who may have given bond in this state, with surety agreeably to law, shall be authorized, in all cases of appeal from one court to another, by him made, to prosecute the same without filing an appeal bond, such appeal to be prosecuted to the district court as appeals are now taken from courts of justices of the peace. [Id. § 8.]

**SEC. 339. [Jurisdiction of judge at chambers.]**—The judge of the district court of the state may, upon the application of an executor, administrator, or guardian, to sell or dispose of the real estate of decedents, spendthrifts, or minors hear and determine the same at chambers in vacation; *Provided*, That in all cases where the judge shall order a sale of any real estate, while sitting at chambers, he shall make out, in writing, a copy of said order, and cause the same to be filed in the office of the clerk of said court, and said clerk shall thereupon record said order, in the record book of said court, before any sale shall be made as aforesaid. [Id. § 4.]

#### CHAPTER 24.—DEPUTIES.\*

**SECTION 1. [Who may appoint.]**—The state auditor, treasurer and librarian respectively, and each county clerk, treasurer, sheriff and surveyor, may appoint a deputy, for whose acts he shall be responsible, and from whom he shall require a bond which appointment shall be in writing, and shall be revocable by writing under the principal's hand; and both the appointment and revocation shall be filed and kept in the office of the county clerk, in case of deputies for county officers, but in case of state officers, they shall be filed and kept by the principals [R. S. 127. G. S. 843.]

**SEC. 336.** "An act in reference to executors and administrators and probate judges, and for disposing of the real estate of decedents, spendthrifts or minors." Laws 1869, 169.

**SEC. 337.** "If the plaintiff in a suit under this provision die, and the cause of action survive, the suit may be revived in the name of his executor or administrator." 6 Neb. 522.

\* **NOTE.**—This chapter embraces chap. XV. R. S., and "An act to authorize deputy clerks to take acknowledgments of deeds and other instruments, and to legalize acknowledgments already taken by such clerks." Laws 1870, 17. G. S. 343.

**SEC. 2. [Duties.]**—In the absence or disability of the principal, the deputy shall perform the duties of his principal pertaining to his own office, but when an officer is required to act in conjunction with or in place of another officer, his deputy cannot supply his place.

**SEC. 3. [Who may not be.]**—The state auditor, treasurer and librarian, can neither of them appoint the other his deputy, nor can either the treasurer, sheriff, clerk or surveyor of a county appoint either of the others.

**SEC. 4. [Sheriff.]**—The sheriff may appoint such number of deputies as he sees fit.

**SEC. 5. [Oath.]**—Each deputy shall take the same oath as his principal which shall be endorsed upon and filed with the certificate of his appointment.

**SEC. 6. [Allowance.]**—When a county officer receiving a salary and no fees is compelled by the pressure of the business of his office to employ a deputy, the county commissioners may make a reasonable allowance to such deputy.

**SEC. 7. [Acknowledgments.]**—Deputy clerks of the district and county courts in this state are hereby authorized to take acknowledgments of deeds and other instruments of writing in the name of their principals, and said acknowledgments shall be as legal and as valid as if taken by their principals. [1870 § 1, 17.]

**SEC. 8. [Acts legalized.]**—All deeds or other instruments of writing heretofore acknowledged in the usual form before any deputy clerk of the district or county courts of any county in this state, shall be and they are hereby declared legal and valid. [Id. § 2.]

## CHAPTER 25.—DIVORCE AND ALIMONY.

**SECTION 1. [Void marriages.]**—Marriages which are declared void by section three of chapter 40, entitled "Marriages," are void without any decree of divorce. [R. S. 128. G. S. 344.]

**SEC. 2. [Voidable marriage.]**—In case of a marriage solemnized when either of the parties are under the age of legal consent, if they shall separate during such non-age, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed voidable.

**SEC. 3. [Petition to annul marriage.]**—When a marriage is supposed to be void, or the validity thereof is doubted, for any of the causes mentioned or referred to in the two preceding sections, either party, excepting in the cases where a contrary provision is hereinafter made, may file a petition in the district court of the county where the parties, or one of them, reside, for annulling the same, and such petition shall be filed, and proceedings shall be had thereon, as in the case of a petition filed in said court for a divorce; and upon due proof thereof, it shall be declared void by a decree or sentence of nullity.

**SEC. 4. [Petition to affirm marriage.]**—When the validity of any marriage shall be denied or doubted by either of the parties, the other may file a petition in the manner aforesaid, for affirming the marriage, and upon due proof of the validity thereof, it shall be declared valid by a decree or sentence of the court, and such decree, unless reversed on appeal, shall be conclusive upon all parties concerned.

**SEC. 5. [Repealed by 1875, 80. Supplied by sec. 6.]**

**SEC. 6. [Jurisdiction of district court.]**—A divorce from the bonds of matrimony may be decreed by the district court of the county where the parties, or one of them, reside, on the application by the petition of the aggrieved party

NOTE.—Chapter XVI, R. S. 128. Chap. 19, G. S. 344.

**SEC. 6.** The action is in its nature a proceeding *in rem*. 9 Neb. 202.—Evidence held insufficient to grant divorce. 7 Neb. 39. 10 Neb. 144. A and B were married in 1873, each at that time having a number of children by a former marriage. The wife refused to remove to the home of her husband, and about two years after the marriage abandoned him, and thereafter brought an action for divorce, which was denied on her petition, but granted to the husband on his answer. *Held*, That on the testimony in the case a decree for permanent alimony was erroneous. 10 Neb. 468.—Summons in divorce cases may be served in any county in the state. 10 Neb. 349.—Sec. 82, civil code, does not apply to actions for divorce. 10 Neb. 390.

in either of the following cases: *First.* When adultery has been committed by any husband or wife. *Second.* When one of the parties was physically incompetent at the time of the marriage. *Third.* When one of the parties has been sentenced to imprisonment in any prison, jail, or house of correction, for three years or more; and no pardon granted, after a divorce for that cause, shall restore such party to his or her conjugal rights. *Fourth.* Where either party shall wilfully abandon the other without just cause, for the term of two years. *Fifth.* When the husband or wife shall have become an habitual drunkard. *Sixth.* When either party shall be sentenced to imprisonment for life; and no pardon shall effect a decree of divorce for that cause rendered. [Amended 1875, 79.]

SEC. 7. [Causes for.]—A divorce from the bonds of matrimony or from bed and board, may be decreed for the cause of extreme cruelty, whether practiced by using personal violence, or by other means; or for utter desertion of either party for the term of two years; and a like divorce may be decreed, on complaint of the wife, when the husband, being of sufficient ability to provide suitable maintenance for her, shall grossly, or wantonly and cruelly refuse or neglect so to do.

SEC. 8. [Residence.]—No divorce shall be granted unless the complainant shall have resided in this state for six months immediately preceding the time of filing the complaint, or unless the marriage was solemnized in this state, and the applicant shall have resided therein from the time of the marriage to the time of filing the complaint.

SEC. 9. [Collusion.]—No divorce shall be decreed in any case when it shall appear that the petition therefor was founded in, or exhibited by collusion between the parties, nor where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.

SEC. 10. [Petition—Service—Witnesses.]—A petition or bill of divorce, alimony and maintenance, may be exhibited by a wife in her own name, as well as a husband; and in all cases the respondent may answer such petition or bill without oath; and in all cases of divorce, alimony and maintenance, when personal service can not be had, service by publication may be made as is provided by law in other civil cases under the code of civil procedure; and either party may be a witness as in other civil cases. [Amended 1869, 28]

SEC. 11. [Proceedings.]—Suits to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as other suits in courts of equity; and the court shall have the power to award issues, to decree costs, and enforce its decrees as in other cases.

SEC. 12. [Alimony—Costs.]—In every suit brought, either for a divorce, or for a separation, the court may, in its discretion, require the husband to pay any sum necessary to enable the wife to carry on or defend the suit during its pendency; and it may decree costs against either party, and award execution for the same; or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

SEC. 13. [Restraint.]—After the exhibition of the petition in a suit to annul a marriage, or for a divorce, whether from the bonds of matrimony, or from bed and board, the court may, at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint upon her personal liberty during the pendency of the cause.

SEC. 14. [Custody of children.]—The court may in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance, during the pendency of such suit, as shall be deemed proper and necessary, and for the benefit of the children.

SEC. 15. [Same.]—Upon pronouncing a sentence or decree of nullity of a marriage, and also upon decreeing a divorce, whether from the bonds of matri-

SEC. 10. The affidavit for service by publication is jurisdictional and must conform to the statute. When it appears that defendant cannot be served with process in this state, the record must show how jurisdiction was acquired. 9 Feb. 191.

SEC. 12. Alimony allowed during pendency of action in supreme court on appeal. 7 Feb. 42.

mony or from bed and board, the court may make such further decree as it shall deem just and proper concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them shall remain.

SEC. 16. [**Same.**].—The court may from time to time, afterwards, on the petition of either of the parents, revise and alter such decree, concerning the care, custody and maintenance of the children, or any of them, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children shall require.

SEC. 17. [**Real estate.**].—Whenever the nullity of a marriage or a divorce from the bonds of matrimony, for any cause, excepting that of adultery committed by the wife, shall be decreed, and when the husband shall be sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate, in like manner as if her husband were dead.

SEC. 18. [**Same.**].—Upon every such dissolution of a marriage, as is specified in the preceding section, and also upon every divorce from bed and board, the court may make a further decree for restoring to the wife the whole, or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband, by reason of the marriage, or for awarding to her the value thereof, to be paid by her husband in money.

SEC. 19. [**Trustees.**].—Upon every divorce for adultery committed by the husband, and upon every divorce from bed and board for any cause, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section, the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid into the hands of a trustee or trustees, to be appointed by the court, upon trust, to invest the same, and to apply the income thereof to the support and maintenance of the wife, and of the minor children of the marriage, or any of them, in such manner as the court shall direct.

SEC. 20. [**Trustees to give bond.**].—Such trustees shall also pay over the principal sum to the wife and children of the marriage, when ordered by the court, in such proportions and at such times as the court shall direct, regard being had in the disposition of said income, as well as of the principal sum, to the situation and circumstances of the wife and children; and the said trustees shall give such bonds as the court shall require, for the faithful performance of their trust.

SEC. 21. [**Examination of husband.**].—Whenever the court shall think proper to award to the wife any of her personal estate, or any money in lieu thereof, in pursuance to the foregoing provisions, such court may require the husband to disclose, on oath, what personal estate has come to him, by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

SEC. 22. [**Alimony.**].—Upon every divorce from the bonds of matrimony for any cause excepting that of adultery, committed by the wife, and also upon every divorce from bed and board, from any cause, if the estate and effects restored or awarded to the wife shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, the court may further decree to her such part of the personal estate of the husband and such alimony out of his estate as it shall deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other circumstances of the case.

SEC. 23. [**Dower.**].—When the marriage shall be dissolved by the husband being sentenced to imprisonment for life, and when a divorce shall be decreed for the cause of adultery, committed by the husband, or misconduct or drunkenness of the husband, or on account of his being sentenced to imprisonment for a term of three years or more, the wife shall be entitled to her dower in his lands in the



same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

SEC. 24. [**Rights of husband.**].—When a divorce shall be decreed for the cause of adultery committed by the wife, the husband shall hold her personal estate forever, and he shall hold her real estate so long as they both shall live; and if he shall survive her, he shall hold her real estate for his own life, as tenant by curtesy.

SEC. 25. [**Rights of wife.**].—In the case last mentioned the court may, by the decree, allow the wife for her subsistence, as much of her said personal or real estate, or of the income thereof, as such court shall judge necessary.

SEC. 26. [**Security for alimony.**].—In all cases where alimony or other allowance shall be decreed for the wife and children, the court may require sufficient security to be given by the husband for the payment thereof according to the terms of the decree; and upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, the court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate, and the rents and profits of such real estate, to be applied to the payment thereof.

SEC. 27. [**Decree.**].—After a decree for alimony, or other allowance for the wife and children, or either of them, and also after a decree for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may, from time to time, on the petition of either of the parties, revise and alter such decree respecting the amount of such alimony or allowance, or the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of the said matters, which such court might have made in the original suit.

SEC. 28. [**Legitimacy of children.**].—A divorce for the cause of adultery committed by the wife, shall not effect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, may be determined by the court upon the proofs in the case; and in every case the legitimacy of all children begotten before the commencement of the suit, shall be presumed until the contrary be shown.

SEC. 29. [**Same.**].—Upon the dissolution of a marriage on account of the non-age, insanity, or idiocy of either party, the issue of the marriage shall be deemed to be, in all respects, the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

SEC. 30. [**Prior marriage.**].—When a marriage is dissolved on account of a prior marriage of either, and it shall appear that the second marriage was contracted in good faith and with the full belief of the parties that the former wife or husband was dead, the fact shall be stated in the decree of divorce or nullity, and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

SEC. 31. [**Consanguinity.**].—Upon the dissolution by decree or sentence of nullity of any marriage that is prohibited on account of consanguinity between the parties, or of any marriage between a white person and a negro, the issue of the marriage shall be deemed to be illegitimate.

SEC. 32. [**Penalties.**].—If any persons, after being divorced from the bonds of matrimony, for any cause whatever, shall cohabit together, they shall be liable for all the penalties provided by law against adultery.

SEC. 33. [**Petition to annul marriage.**].—A petition to annul a marriage on the ground that one of the parties was under the age of legal consent, may be exhibited by the parent or guardian entitled to the custody of such minor, but in no case shall such marriage be annulled on the application of a party who was of the age of legal consent at the time of the marriage, nor when it shall appear that the parties, after they had obtained the age of consent, had freely cohabited as man and wife.

SEC. 34. [**Same.**].—A petition to annul a marriage on the ground of insanity or idiocy, may be exhibited by any person admitted by the court to prosecute as the next friend to such idiot or lunatic.

SEC. 35. [**Lunatic.**].—The marriage of a lunatic may also be declared void upon the application of the lunatic, after the restoration of reason, but in such case no sentence of nullity shall be pronounced, if it shall appear that the parties freely cohabited as husband and wife, after the lunatic was restored to a sound mind.

SEC. 36. [**Force or fraud.**].—If there shall be any issue of a marriage, annulled on the ground of force or fraud, the court shall decree their custody to the innocent person, and may also decree a provision for their education and maintenance out of the estate and property of the guilty party.

SEC. 37. [**Physical incapacity.**].—A suit to annul a marriage on the ground of the physical incapacity of one of the parties, shall only be maintained by the injured party against the party whose incapacity is alleged, and shall, in all cases, be brought within two years from the solemnization of the marriage.

SEC. 38. [**Confession and admission.**].—No decree of divorce and of the nullity of a marriage shall be made solely on the declarations, confessions or admissions of the parties, but the court shall, in all cases, require other satisfactory evidence of the facts alleged in the petition for that purpose.

SEC. 39. [**In what cases court may deny divorce.**].—In any suit brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases: *First.* When the offense shall appear to have been committed by the procurement, or with the connivance of the complainant. *Second.* When the offense charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties with the knowledge of the offense. *Third.* When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have been brought within five years after the discovery by the complainant of the offense charged.

SEC. 40. [**Order for maintenance.**].—In case of an application for a divorce from bed and board, although a decree for such divorce be not made, the court may make such order or decree for the support and maintenance of the wife and children, or any of them, by the husband, or out of his property, as the nature of the case may render suitable and proper.

SEC. 41. [**Revocation of decree.**].—When a decree of divorce from bed and board forever, or for a limited time, shall have been pronounced, it may be revoked at any time thereafter, under such regulations and restrictions, as the court may impose, upon the joint application of the parties, and their producing satisfactory evidence of their reconciliation.

SEC. 42. [**Residence of wife.**].—If any married woman, at the time of exhibiting a petition against her husband, under the provisions of either of the last two sections, shall reside in this state, she shall be deemed an inhabitant thereof, although her husband may reside elsewhere.

SEC. 43. [**Custody of children.**].—When, from any cause, a husband and wife shall separate, and the wife shall claim possession of any child or children who may be the fruit of such marriage, not exceeding twelve years of age, said wife shall apply to the probate judge of the county wherein said husband and wife resided at the time of their separation, or in which the mother may reside at the time of said application for the custody of said child or children. The probate judge shall give said husband notice of the application, together with the time set for hearing the cause, which time shall not be less than three days from the service of the notice, and the notice may be served by leaving a copy at the usual place of residence of the husband. [12 Sess. Ter., 1867 § 1, 18.]

SEC. 44. [**Same.**].—If it shall appear that said mother is able to provide for the maintenance of such child or children, and should under the proof presented

SEC. 43. "An act relating to the custody of children in certain cases." Laws 12th Sess. Ter., 18.

be awarded the custody of such child or children, the probate judge shall order that such child or children shall remain in the custody of the mother, until the custody of such children shall be otherwise ordered by the district court; *Provided*, That such order shall never be made when it shall appear by the proof [that] the wife is the offending party. [Id. § 2.]

## CHAPTER 26.—ELECTIONS.

**SECTION 1. [When held.]**—The general election of this state shall be held on Tuesday succeeding the first Monday in November of each year. [1879, 240.]

**SEC. 2. [Officers to be elected.]**—All state, district, county, precinct and township officers, by the constitution and laws made elective by the people, except school district officers, and municipal officers in cities and villages, shall be elected at a general election to be held at the time provided in the preceding section.

**SEC. 3. [Qualifications of voters.]**—Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state six months, in the county forty days, and in the precinct, township, or ward ten days, shall be an elector. *First*. Citizens of the United States. *Second*. Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization at least thirty days prior to an election.

**SEC. 4. [Disqualification.]**—No person shall be qualified to vote who is *non compos mentis*, or who has been convicted of treason or felony under the law of the state, or of the United States, unless restored to civil rights.

**SEC. 5. [Soldiers and sailors.]**—No soldier, seaman, or marine in the army and navy of United States, shall be deemed a resident of the state in consequence of being stationed therein.

**SEC. 6. [Privileges.]**—Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and going to and returning from the same, and no elector shall be obliged to do military duty on the days of election, except in time of war and public danger.

**SEC. 7. [Officers elected.]**—One judge of the supreme court, and two regents of the university shall be elected in the year 1879, and every second year thereafter, who shall serve for the term of six years. Judges of the district court shall be elected in the year 1879, and every four years thereafter. The governor, lieutenant-governor, congressmen, state treasurer, auditor of public accounts, secretary of state, attorney general, commissioner of public lands and buildings, superintendent of public instruction, one district attorney for each judicial district and members of the legislature shall be elected in the year 1880, and every second year thereafter. In counties not under township organization, one county judge, one sheriff, one coroner, one county treasurer, one county clerk, one county surveyor, and one county superintendent of public instruction shall be elected in the year 1879, and every second year thereafter, and in each precinct two justices of the peace and two constables shall be elected in the year 1879, and every second year thereafter, and three judges and two clerks of election, one assessor and one overseer of highways for each road district shall be elected in the year 1879, and annually thereafter, and one county commissioner shall be elected annually, who shall serve three years. In counties under township organization, one county judge, one sheriff, one coroner, one county treasurer, one county clerk, one county surveyor, and one county superintendent of public instruction, shall be elected at the first general election after the adoption of township organization, and every second year thereafter. At the first general election in each township after the adoption of township organization, one supervisor, one town clerk, one town

NOTE.—“An act to provide a general election law, the procedure relative to contested elections, and the filling of vacancies in office.” Took effect September 1, 1879. Laws 1879, 240.

NOTE. also, that “an act to provide for election of electors of president and vice president,” approved Oct. 28, 1868 and published in Laws 1868, p. 221, incorporated in Gen. Stat. 366, sec. 55-63, was repealed by act of 1877. [Laws p. 146] which was in turn repealed by sec. 112 of the act given in the text.

Sec. 7. Clerk district court. 10 Neb. 307

treasurer, three judges and two clerks of election, one assessor, and one overseer of highways for each road district, shall be elected, and annually thereafter; and two justices of the peace and two constables shall be elected at said election, and every second year thereafter; and at the first general election after the adoption of township organization in any county, in each city and in each village, one supervisor for every one thousand inhabitants therein, one assessor, three judges and two clerks of election shall be elected, and annually thereafter; and in each ward, and in each village having more than five hundred inhabitants, two justices of the peace and two constables shall be elected at said election, and every second year thereafter. In each county having a population of 8,000 inhabitants, or more, there shall be elected in the year 1879, and every four years thereafter, a clerk of the district court in and for such county, and in each county having a population of less than 8,000 inhabitants the county clerk shall be *ex-officio* clerk of the district court, and perform all the duties devolving upon that officer by law. All county, precinct and township officers created by statute, or that may be hereafter created, shall be elected at such general elections as may be provided in the law creating the office or offices.

**SEC. 8. [Presidential electors.]**—Electors of president and vice-president shall be elected at the general election in the year 1880, and every four years thereafter, on such day as congress may appoint, said electors to be chosen from the state at large.

**SEC. 9. [United States senator.]**—At the general election immediately preceding the expiration of the term of a United States senator from this state, the electors shall, by ballot, express their preference for some person for the office of United States senator. The votes to be canvassed and returned in the manner hereinafter provided.

**SEC. 10. [County treasurer.]**—A county treasurer shall be ineligible to office for more than two consecutive terms.

**SEC. 11. [Proclamation.]**—Thirty days previous to any election at which any state officer is to be elected, the governor shall issue his proclamation designating all the offices to be filled by the vote of all the electors of the state, or by those of any congressional, legislative, or judicial district, and transmit a copy thereof by mail to the county clerk of each county.

**SEC. 12. [Notice.]**—At least twenty days previous to any election, the county clerk, in counties not under township organization, shall make out and deliver to the sheriff of his county, or in counties under township organization, to the several town clerks, and to city clerks in cities of the first and second class, three notices thereof for each precinct, township, or ward in which the election in such county is to be held. The notices shall be substantially as follows:

"Notice is hereby given, that on Tuesday, the — day of November, —, next, at the house of —, in —, an election will be held for governor, etc., (naming all the state and other officers to be balloted for), which election will be open at eight o'clock in the morning, and will continue open until six o'clock in the afternoon of the same day.

Dated this — day of —, A. D. 18—.

A. B., County Clerk.

**SEC. 13. [Posting notices.]**—The said sheriff, or town or city clerk to whom the notices are delivered, shall post up in three of the most public places in each precinct, township or ward, the three notices therefor, at least ten days before the time of holding any election.

**SEC. 14. [Opening polls.]**—At all elections the polls shall be opened at eight o'clock in the morning, and close at six o'clock in the afternoon of the same day; but if the judges and clerks shall not attend at the hour of eight o'clock in the morning, or if it shall be necessary for the electors present to appoint judges and clerks, or any of them, as hereinafter prescribed, the polls may, in that case, be opened at any time before the time for closing the same shall arrive, as the case may require.

**SEC. 15. [Oath of officers.]**—Previous to any vote being taken, the judges

and clerks of election shall severally take an oath or affirmation according to the form prescribed in chapter on official bonds.

**SEC. 16. [Administering oath.]**—In case there shall be no judge or justice of the peace present at the opening of the polls, it shall be lawful for the judges of election to administer the oath or affirmation to each other and the clerks of election; and the person administering such oath or affirmation shall cause an entry thereof to be made and subscribed by him, and prefixed to each poll book.

**SEC. 17. [Vacancies.]**—In the event of any person or persons elected, or that have been appointed as herein provided for, shall not attend at the time and place of holding such election, the electors present shall choose the requisite number of persons to fill the respective offices of clerks and judges of election, and the person or persons thus chosen shall qualify as provided in the last two preceding sections.

**SEC. 18. [Proclamation.]**—Upon opening the polls, one of the judges of election shall make proclamation of the same, and at least thirty minutes before the closing of the polls proclamation shall be made in like manner that the polls will be closed in half an hour.

**SEC. 19. [Ballot box.]**—Before any ballot shall be deposited in the ballot box the ballot box shall be publicly opened and exhibited, and the judges and clerks shall see that no ballot is in such box; after which the box shall be locked and the key delivered to one of the judges, and shall not be again opened until the close of the polls; and the ballot box shall not be removed from the view of the electors present until the polls are closed and all the votes shall have been counted and canvassed; nor shall two of the judges be absent from the room or building in which the election is held, at the same time, during such voting and canvassing.

**SEC. 20. [Form of poll books.]**—The county clerk, previous to the opening of the polls, shall prepare duplicate poll books, in the manner and form following:—

Poll books of an election, held in \_\_\_\_\_ precinct, \_\_\_\_\_ township, or \_\_\_\_\_ ward, in \_\_\_\_\_ county, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, at which time A. B., C. D., and E. F., were judges, and G. H., and I. K., were clerks of said election—the following named persons voted thereat:

NUMBERS AND NAMES OF ELECTORS.

No. 1. A. B.  
No. 2. C. D.

No. 3. E. F.  
No. 4. G. H.

We do hereby certify, that the above is a true list of the persons voting at the above named election.

ATTEST:

A. B.,  
C. D.,  
E. F.,

G. H.,  
I. K.,

*Judges of election.*

*Clerks.*

TALLY LIST OF PERSONS VOTED FOR, AND FOR WHAT OFFICE, CONTAINING THE NUMBER OF VOTES FOR EACH CANDIDATE.

Governor.	Member of Congress.	County Clerk.	
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We hereby certify that A. B. had \_\_\_\_\_ votes for governor, and C. D. had \_\_\_\_\_ votes for governor; that E. F. had \_\_\_\_\_ votes for member of congress, etc.

ATTEST:

A. B.,  
C. D.,  
E. F.,

G. H.,  
I. K.,

*Judges of election.*

*Clerks.*

**SEC. 21. [Ballots.]**—The ballots shall designate the office for which the persons therein named are voted for.

**SEC. 22. [Receiving ballots.]**—One of the judges of election shall receive each ballot from the person offering to vote, at the same time announcing the name of such person in a clear, distinct voice, and if his right to vote be not challenged, or in cities of the first and second class if the name of the person offering to vote is on the register list, his ticket shall be placed in the ballot box, without inspecting the names written or printed thereon, and the clerks of election shall enter the name of the voter and the number in each poll book, when his ballot is received.

**SEC. 23. [Ballot boxes.]**—The county board shall provide a sufficient number of ballot boxes, with secure locks and keys, at the expense of the county, for the several precincts or districts; and each ballot box at the close of each election shall be deposited with one of the judges of election, who shall take charge of the same and be responsible for its safe keeping; and he shall convey said ballot box, or cause it to be conveyed, to the place of holding elections in his precinct, township or ward, at the next general or special election, and deliver or cause the same to be delivered, to one of the judges of said election.

**SEC. 24. [Preservation of order.]**—Any constable of the precinct, township or ward, who may be designated by the judges of election, is directed to attend at the place of election and he is authorized and required to preserve order and peace at and about the same; and if no constable be in attendance the judges of election may appoint one or more specially, by writing, who shall have all the powers of a regular constable.

**SEC. 25. [Arrests.]**—If any person conducts in a noisy, riotous or tumultuous manner, at or about the polls so as to disturb the election, or insults or abuses the judges or clerks of election, and persists in such conduct after being warned to desist, the constable shall forthwith arrest him without warrant, and bring him before the nearest justice of the peace to be dealt with according to law; but such person shall be permitted to vote.

**SEC. 26. [Duties of officers where registration is made.]**—The judges in cities of the first and second class where the registry law is in force, shall designate one of their number to check on the register the name of every person voting; and no vote shall be received from any person whose name does not appear there, unless he shall furnish the judges his affidavit, showing that he is a qualified elector, and a sufficient reason for not appearing before the registrar, and shall also prove by the affidavit of one elector whose name is on the register, that such affiant knows him to be a resident of that city, giving his residence by street and number, as the same is in such case required to appear on the register. Said affidavits shall be kept by the judges and by them filed in the office of the county clerk, and all such affidavits may be administered by either of the judges or clerks of election.

**SEC. 27. [Challenge.]**—Any person offering to vote, whether his name be on the register or not, may be challenged as unqualified by any judge or elector; and it is the duty of each of the judges to challenge any person offering to vote whom he knows or suspects not to be duly qualified.

**SEC. 28. [Oath.]**—If any person offering to vote is challenged by one of the judges of the election, or by an elector, one of the judges shall tender to him the following oath or affirmation:

"You do solemnly swear [or affirm] that you will fully and truly answer all such questions as shall be put to you, touching your place of residence and qualifications as an elector at this election."

**SEC. 29. [Questions.]**—If the person be challenged on the ground that he has not made his declaration of intention to become a citizen of the United States, the judges, or one of them, shall put the following question, provided that the person so challenged does not produce his intention papers: "Have you made your declaration of intention to become a citizen of the United States?"

If the person be challenged on the ground that he has not resided in this state for six months immediately preceding the election, the judges, or any one of them

shall put the following questions: *First*. "Have you resided in this state for six months immediately preceding this election?" *Second*. "Have you been absent from this state within the six months immediately preceding this election?" If he answers "Yes," then,—*Third*. "When you left, did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away?" *Fourth*. "Did you, while absent, look upon and regard this state as your home?" *Fifth*. "Did you, while absent, vote in any other state or territory?"

If the person be challenged on the ground that he is not a resident of the county, precinct, township, or ward where he offers to vote, the judges, or one of them, shall put the following questions: *First*. "Have you resided in this county for forty days last past?" *Second*. "Have you resided in this precinct (or ward) for the last ten days?" *Third*. "When did you last come into this county?" *Fourth*. "When you came into this county, was it for temporary purposes merely, or for the purpose of making it your home?" *Fifth*. "Did you come into this county for the purpose of voting therein?" *Sixth*. "Are you now an actual resident of this precinct or ward?"

If the person be challenged on the ground that he is not twenty-one years of age, the following question shall be put: "Are you twenty-one years of age, to the best of your knowledge and belief?" The judges of the election, or one of them, shall put all such other questions to the person challenged under the respective provisions of section two of this chapter, as may be necessary to test his qualifications as an elector at that election.

SEC. 30. [Refusal to swear.]—If any person shall refuse to take the oath or affirmation provided for in this chapter, his vote shall be rejected.

SEC. 31. [Final oath if challenge not withdrawn.]—If a person's vote be challenged, and such challenge be not withdrawn after he shall have answered the foregoing questions, or such of them as may be necessary, one of the judges shall tender to him the following oath:

"You do solemnly swear (or affirm) that you are a citizen of the United States (or have declared your intention to become such), that you have been an inhabitant of the state of Nebraska for the last six months, and of the county of \_\_\_\_\_ for the last forty days, and of this precinct for the last ten days; that you have attained the age of twenty-one years, to the best of your knowledge and belief."

And it shall be the duty of the clerks of election to write on the poll books, at the end of such person's name, "sworn."

SEC. 32. [Residence defined.]—The judges of election, or in cities of the first and second class, the registrars of voters, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as the same may be applicable: *First*. That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent he has the intention of returning. *Second*. A person shall not be considered or held to have lost his residence, who shall leave his home and go into another territory or state, or county of this state, for temporary purposes merely, with the intention of returning; *Provided*, That six months consecutive residence in this state shall be necessary to establish a residence within the meaning of this chapter. *Third*. A person shall not be considered and held to have acquired a residence in any county of this state into which he shall have come for temporary purposes merely without the intention of making it his residence. *Fourth*. If a person remove to another territory or state, intending to make it his permanent residence, he shall be considered and held to have lost his residence in this state. *Fifth*. If a person remove to another state or territory, intending to remain there for an indefinite time, and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may intend to return at some future period. *Sixth*. The place where a married man's family resides shall generally be considered and held to be his residence; but if it is a place of temporary establishment only, or for transient purposes, it shall be otherwise. *Seventh*.

If a married man have his family fixed in one place, and he does business in another, the former shall be considered and held to be the place of his residence. *Eighth.* The mere intention to acquire a new residence, without the fact of removal, shall avail nothing, nor shall the fact of removal, without intention. *Ninth.* If a person shall go into another territory or state, and while there shall exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this state.

Sec. 33. [**Canvass.**].—When the poll is closed the judges shall immediately proceed to canvass and ascertain the result of the election.

Sec. 34. [**Same.**].—The canvass shall be public, and shall commence by a comparison of the poll lists from the beginning, and a correction of any errors that may be found therein until they agree. The poll books shall then be signed by the judges and attested by the clerks, and the names therein contained shall be counted, and the number set down at the foot of the poll books.

Sec. 35. [**Opening ballot box—Excessive ballots.**].—The ballot box shall then be opened, and the ballots without being unfolded, shall be counted by the judges. If the whole number of votes cast shall exceed the number of persons voting, as shown by the poll books, the said ballots shall then be replaced in the ballot box, the box locked, and the ballots therein thoroughly shaken. The box shall then be opened, and one of the judges shall draw from the box as many ballots as there shall have been cast exceeding the number as shown by the poll books, and the number so withdrawn shall, without unfolding, be placed in a separate envelope, sealed, marked "Excessive ballots," and sent with other returns of election to the county clerk in the manner hereinafter provided.

Sec. 36. [**Counting vote.**].—After the poll books have been examined, compared and signed, and the excessive ballots, if any, shall have been withdrawn, sealed up and endorsed, the ballots remaining in the box shall be taken out by one of the judges, and the canvass shall be continued by the judges announcing to the clerk the number of votes each candidate ballotted for shall have received, after which the ballots shall be strung upon a strong thread.

Sec. 37. [**Clerks' tally list.**].—The clerks shall enter upon the tally list of the poll books, in columns under the names of persons voted for, all the votes as declared read by the judges.

Sec. 38. [**Double ballots.**].—If two or more ballots are found so folded together as to convince the judges that they were cast as one, they shall not be counted, but they shall have the words "rejected as double," written upon them, be folded together again, and kept as herein directed.

Sec. 39. [**Designation of office.**].—If, at any stage of the canvass, a ballot, not stating for what office the person therein named is voted for, is found in the box, when officers of different kinds are to be elected, it is to be rejected, and disposed of as hereinafter directed.

Sec. 40. [**Excess of names on ballot.**].—Whenever a ballot shall contain a greater number of names for any one office than the number of persons required to fill that office, it shall be deemed fraudulent as to the whole of the names for that office, but no further; and shall be endorsed, "rejected as to office of ————" and disposed of as hereinafter directed; and no ballot shall be deemed fraudulent because it contains a less number of names than are authorized to be inserted.

Sec. 41. [**Surname of candidate.**].—If at any stage of the canvass a ballot shall be found having correctly written or printed thereon the surname of any person for any office, who shall be a candidate for such office at said election, and there shall be no other candidate for the same office having the same surname, such ballot shall be counted for such candidate, although the initial letter or letters or first name or names written or printed before his surname may not be those properly belonging thereto; but if there shall be two or more candidates

Sec. 36. When the intention of the voter is clearly ascertainable from the ballot, the law will require his vote to be counted. 5 Neb. 147.



at said election for the same office, having the same surname, and such initial letter or letters, or first name or names written or printed on said ballot, shall properly belong to neither of the candidates, such ballot shall be rejected, and disposed of as hereinafter directed. A candidate within the meaning of this section is any person intentionally voted for at any election.

**SEC. 42. [List of persons voted for.]**—When all the votes shall have been examined and counted, the clerks shall set down in the form in their poll books the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number of votes he received, which number shall be expressed in words at full length.

**SEC. 43. [Returns of election.]**—Upon the completion of the canvass, the judges of election shall seal up in a package all the ballots counted, together with ballots marked as rejected, and mark the same "ballots cast." They shall also enclose one of the poll books in an envelope or cover and seal the same. The poll book thus sealed, the package marked "ballots cast," and "excessive ballots," if any there be, shall be securely bound together, and directed to the county clerk. The packages thus bound together shall be conveyed to the county clerk by one of the judges or clerks of election, within four days from the close of the polls. The clerk shall give a receipt stating that the poll books and ballots have been received and deposited with him.

**SEC. 44. [Care of poll books.]**—In counties not under township organization, the other poll book shall be deposited with one of the judges, to be appointed by the said judges to receive the same, and it shall be subject to the inspection of any elector who may wish to examine the same during the period of six months after such election shall have been held. In counties under township organization, in townships constituting a single precinct, the judges of election shall certify the result as to township officers immediately after footing up the result of the canvass on the poll books, and file such certificate, together with the other poll books in the office of the town clerk; but where there are two or more election precincts in a township, the township board shall meet on the day after the election, and canvass the vote given for township officers as shown by the returns from the precincts, and the township board shall issue certificates of election accordingly.

**SEC. 45. [Tie vote for township office.]**—Where there is a tie between two persons for a township office, the clerk shall notify them to appear at his office at a given time to determine the same by lot before the board, and the certificate of election is to [be] given accordingly. If either party fail to appear or to take part in the lot, the clerk shall draw for him.

**SEC. 46. [County canvass.]**—Upon the reception of the returns of each election precinct, township, or ward, by the county clerk, directed to him as hereinbefore provided, and within six days after the closing of the polls, he, together with two disinterested electors of the county, to be chosen by himself, shall open the poll books, and from the returns therein make abstracts of the votes cast in the following manner, except votes for township officers in counties under township organization canvassed by the town board as provided in section forty-four; of votes for governor, lieutenant governor, members of congress, secretary of state, auditor of public accounts, state treasurer, attorney general, state superintendent of public instruction, commissioner of public lands and buildings, and district attorneys on one sheet; of votes for presidential electors on another sheet; of votes expressing the choice of electors for United States senator on another sheet; of votes for judges of the supreme and district courts, and regents of the University on another sheet; of votes for members of the legislature from the county alone, on another sheet; of votes for members of the legislature by districts

**SEC. 46.** See sec. 112. The canvassing board cannot go behind the returns, cannot open packages of ballots and make a recount thereof. 4 Neb. 509. 8 Neb. 290. 10 Neb. 51. 58. Mandamus will lie to compel them to discharge their duty. 5 Neb. 145. The remedy by contest provided for in sec. 80 is not exclusive. *State v. Stearns*, 11 Neb. 104.

comprising more than one county, on another sheet; and of votes for county and precinct officers on another sheet. The foregoing abstracts shall be preserved by the county clerk in his office.

**SEC. 47. [Completion of canvass.]**—Upon the completion of the canvass the poll books shall be again sealed up, and together with the sealed packages of ballots, still unopened, securely bound in one package, shall be deposited in the office of the county clerk, where they shall be safely kept for twelve months, and the county clerk shall not allow the same to be inspected, unless in cases of contested elections, or the same become necessary to be used in evidence in the courts, and then only by the person and in the manner provided by law.

**SEC. 48. [Certificate of election.]**—The county clerk shall make out a certificate of election to each of the persons having the highest number of votes for the several county and precinct offices, and members of the legislature from the county alone.

**SEC. 49. [Tie vote.]**—When there is a tie between two persons for an office to be filled by the county alone, or by any precinct therein, the clerk shall notify them to appear at his office at a given time to determine the same by lot before the canvassing board, and the certificate of election is to be given accordingly. If either party fail to appear or to take part in the lot, the county clerk shall draw for him.

**SEC. 50. [Returns in legislative district.]**—When two or more counties are embraced in one senatorial or representative district, the clerks of the several counties in said district shall, within seven days after the election, transmit by mail or otherwise to the clerk of the county first named in the law designating the district, a copy of the abstract of all the votes cast in the several counties composing such district, for senator or representative, and the clerk of the county first named in the law designating the district, on the reception of such abstracts, shall select two disinterested electors, and the three shall compare the votes given in the several counties as shown by the abstracts returned, and the said clerk shall make out and deliver to the person having the highest number of votes for the senate or house of representatives, a certificate of election which shall be delivered to the proper person, or his agent, when called for.

**SEC. 51. [Canvass of vote for state officers.]**—The votes cast for governor, lieutenant governor, members of congress, secretary of state, auditor of public accounts, state treasurer, state superintendent of public instruction, attorney general, commissioner of public lands and buildings, and district attorneys, and votes cast expressing the choice of electors for United States senator, shall be canvassed by the legislature at its next regular session. A copy of the abstract of votes cast for such officers shall be sealed up by the county clerk immediately upon the completion of the canvass, endorsed, "abstract of votes cast for officers of the executive department, from \_\_\_\_\_ county," or, "abstract of votes cast expressing the choice of electors for United States senator from \_\_\_\_\_ county," and addressed to "the speaker of the house of representatives."

**SEC. 52. [Duplicate abstracts.]**—The county clerk shall, at the same time, envelope and seal up a duplicate copy of the same abstracts directed to the secretary of state, and all of the abstracts shall be placed in one envelope and addressed to the secretary of state, who shall preserve the ones addressed to "the speaker of the house of representatives" unopened, until the meeting of the legislature, and from the duplicate copies prepare a tabular sheet of the votes cast for such officers and preserve the same for the use of the legislature in making the official canvass as required by the constitution.

**SEC. 53. [Canvass for electors, judges and regents.]**—The votes cast for presidential electors, judges of the supreme and district courts, and regents of the university, shall be canvassed by a board of state canvassers, consisting of the governor, secretary of state, auditor of public accounts, treasurer and attorney general, and a copy of the abstracts of votes cast for such officers shall be made by the county clerks, sealed up, directed to the secretary of state, and endorsed, "election returns for the offices of — — —."

**Sec. 54. [Abstracts delayed.]**—If the abstracts from any county are not received at the office of the secretary of state by the second Monday after the day of election, the secretary is authorized to send a messenger to the clerk of such county, at the expense of such county, who shall furnish such messenger with the abstracts, or, if they have been sent, with a copy of them, and he shall return them to the secretary without delay. If the abstracts were delayed by reason of the fault or neglect of the clerk, he shall be responsible to the county for the costs of the messenger.

**Sec. 55. [Abstracts preserved.]**—The abstracts of votes to be canvassed by the board of state canvassers shall be kept in the office of the secretary of state, and shall only be opened in the presence of such board at the time provided in the following section.

**Sec. 56. [Meeting of state board.]**—The board of state canvassers shall meet at the office of the secretary of state on the third Monday after the election; and in case all of said returns shall not have then be[en] received at the office of the secretary of state, the board may adjourn from day to day until the same shall have been received, not exceeding five days.

**Sec. 57. [Abstract by state board.]**—They shall make an abstract stating the number of ballots cast for each office, the names of all the persons voted for, for what office they respectively received the votes, and the number of votes each received, in words at length, and stating whom they declare to be elected to the office, which abstract shall be signed by the canvassers in their official capacity, and as state canvassers, and have the seal of the state affixed; but should any two or more persons be returned with an equal and the highest vote, the board shall decide by lot which of said persons is elected.

**Sec. 58. [Record.]**—The secretary shall record the abstract in a book to be kept by him for recording the result of the state elections and to be called the election book, and also file the abstract.

**Sec. 59. [Certificate.]**—A certificate shall be prepared for each person elected, in substance as follows:

STATE OF NEBRASKA.

At an election holden on the \_\_\_\_\_ day of \_\_\_\_\_ A. B. was elected to the office of \_\_\_\_\_, for the term of \_\_\_\_\_ years from the \_\_\_\_\_ (or, if to fill a vacancy, say, for the residue of the term ending on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_).

Given at Lincoln this \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_.

Such certificate shall be signed by the governor, under the seal of the state, and countersigned by the secretary of state.

#### ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

**Sec. 60. [Certificate to presidential electors.]**—The certificate of election for presidential electors shall be served on each person elected, notifying him to attend at the seat of government at noon of the Tuesday preceding the first Wednesday of December next after his election, and report himself to the governor as in attendance.

**Sec. 61. [Meeting of electors.]**—The electors so attending shall meet at noon of the said Tuesday, and the governor shall provide each of them a list of all the electors, and in case of the absence of any elector or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the state so many persons as will supply the deficiency, and immediately issue a certificate of election, signed by those present, or a majority of them, to the person so chosen. In case of failure to elect by noon of the following day, the governor shall fill the vacancies by appointment.

**Sec. 62. [Same.]**—The college of electors being full, shall meet at the capitol at noon of the said first Wednesday of December, and proceed to the election in conformity with the constitution of the United States.

**Sec. 63. [Compensation.]**—The electors shall receive a compensation of

five dollars for every days attendance, and the same mileage as members of the legislature

#### ON CONTESTING ELECTIONS.

**SEC. 64. [Contesting elections.]**—The election of any person to any public office, the location or re-location of a county seat or any proposition submitted to a vote of the people may be contested. 1. For mal-conduct, fraud, or corruption on the part of the judges of election in any precinct, township, or ward, or of any board of canvassers, or any member of either board sufficient to change the result. 2. When the incumbent was not eligible to the office at the time of the election. 3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights. 4. When the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property, or any thing of value for the purpose of procuring his election. 5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result. 6. For any error in any board of canvassers in counting the votes, or in declaring the result of the election if the error would change the result. 7. When the incumbent is in default as a collector and custodian of public money or property. 8. For any other cause which shows that another person was legally elected.

**SEC. 65. ["Incumbent" defined.]**—The term "incumbent" in this chapter means the person whom the canvassers declare elected.

**SEC. 66. [Misconduct of judges of election.]**—When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election, unless the vote of the precinct, township, or ward, would change the result as to that office.

**SEC. 67. [Contests for executive officers.]**—The legislature in joint meeting shall hear and determine cases of contested election for all officers of the executive department. The meeting of the two houses, to decide upon such elections, shall be held in the hall of the house of representatives, and the speaker of the house shall preside.

**SEC. 68. [Legislative officers.]**—The senate and house of representatives shall severally hear and determine contests of the election of their respective members.

**SEC. 69. [Judicial officers.]**—The supreme court shall hear and determine contests of the election of judges of the supreme court, judges of the district courts, district attorneys, and regents of the university; and in case they shall disagree, the governor shall act with them in determining the contest, but no judge of the supreme court shall sit upon the hearing of any case in which he is a party.

**SEC. 70. [County judges and questions submitted to vote of county.]**—The district courts of the respective counties shall hear and determine contests of the election of county judge, and in regard to the removal of county seats, and in regard to any other subject which may by law be submitted to the vote of the people of the county, and the proceedings therein shall be conducted as near as may be hereinafter provided for contesting the election of county officers.

**SEC. 71. [County, city, precinct etc., officers.]**—The county courts shall hear and determine contests of all other county, township and precinct officers, and officers of cities and incorporated villages within the county.

**SEC. 72. [Procedure in cases of contest for state office.]**—Whenever any elector of this state chooses to contest the validity of the election of any of the officers of the executive department of the state, or whenever any elector of the proper county or district chooses to contest the election of any member of the legislature from such county or district, such person shall give notice thereof in writing, read such notice to and leave a copy thereof with the person whose election he intends to contest, within twenty days, after the election; if the person cannot be found in his district, then a copy to be left at his last place of residence

in the district, naming the points on which the election shall be contested, and the name of some person authorized by law to administer oaths, selected by him to take the depositions, and the time and place for the taking of the same; the adverse party may also select one such person on his part to attend at the time and place of taking such depositions.

**Sec. 73. [Notice.]**—The notice provided for in the preceding section shall be served at least ten days before the day fixed for the taking of depositions. The said two persons selected as aforesaid to take the depositions, shall proceed jointly, or in default of either one of such persons to attend at the time and place fixed upon, the one attending shall proceed to hear and reduce to writing the testimony of all witnesses who may be produced by either of said parties, and may adjourn from day to day until all said testimony shall have been taken and reduced to writing; *Provided*, That such testimony shall be finally closed on or before the 29th of December following.

**Sec. 74. [Testimony sealed and sent to secretary of state.]**—No testimony shall be received by the person officiating at the taking of the depositions on the part of the contestant which does not relate to the points specified in the notice, a copy of which notice shall be delivered to the person or persons so officiating, and said testimony, together with a copy of the notice, when taken, shall be certified by the person or persons before whom the same is taken, enveloped, sealed up, endorsed "depositions taken in the matter of the contest of the election of A. B., to the office of \_\_\_\_\_," and directed to the secretary of state, who shall preserve the same, unopened, till the meeting of the legislature.

**Sec. 75. [Ballots, etc., to be transmitted.]**—If, at the time of taking depositions to be used before the legislature, or either branch thereof, in the case of a contested election, the notice shall allege that it is necessary for the determination of such contest that the ballots or the poll books of any election district or districts should be inspected, the officer or officers before whom such depositions shall be taken shall, on the request of either party to the contest, issue an order requiring the county clerk, or other person in whose custody or possession the ballots or poll books may be, naming the district or districts mentioned in the notice, to deliver them to the person or persons therein named, who shall deliver them to the person or persons issuing such order. Such officer or officers shall transmit such ballots or poll books, unopened, in the same envelope with the depositions as provided in the preceding section.

**Sec. 76. [Papers delivered to presiding officers of senate and house.]**—On the second day of the organization of the legislature, the secretary of state shall deliver to the speaker of [the] house all papers relating to contested elections of executive officers, and to the presiding officers of each house all papers relating to contested elections of the members of their respective houses.

**Sec. 77. [Meeting of houses.]**—Upon the reception by such presiding officers of papers relating to contested elections, they shall immediately give notice to their respective houses that such papers are in their possession. Where the papers relate to the contest of any executive state officer, the house of representatives shall notify the senate, and a day shall be fixed by both houses by concurrent resolution for the uniting of the two houses to decide upon the same, in which decision the yeas and nays shall be taken and entered upon the journal.

**Sec. 78. [Opening papers.]**—The papers relating to any such contest shall be opened only in the presence of the body by the presiding officer to whom the same shall be delivered. If ballots or poll books are contained therein, they shall, after being opened, remain in the custody of such presiding officer, subject to the inspection of the members, unless they shall by vote be temporarily committed to the chairman of a committee, in which case such chairman shall return them to the proper presiding officer; and they shall, upon the decision of the contest, be again sealed up in an envelope and returned by mail or otherwise to the office of the county clerk in which they were first required to be filed.

**Sec. 79. [Evidence preserved.]**—All the evidence in any contest pro-

vided for in the last preceding section, except ballots or poll books, shall, after a decision thereof, be preserved in the office of the secretary of state.

SEC. 80. [**Contests relative to other officers.**].—The election of any person declared elected to any office other than executive state officers and members of the legislature may be contested by any elector of the state, judicial district, county, township, precinct, city, or incorporated village in and for which the person is declared elected.

SEC. 81. [**Complaint.**].—The contestant shall file in the proper court, within twenty days after the votes are canvassed, a complaint, setting forth the name of the contestant, and that he is an elector competent to contest such election, the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which complaint shall be verified by the affidavit of the contestant, that the causes set forth are true as he verily believes. The contestant must also file a bond, with security to be approved by the clerk of the court, or county judge, as the case may be, conditioned to pay all costs in case the election be confirmed, the complaint dismissed, or the prosecution fail.

SEC. 82. [**Contents of complaint.**].—When the reception of illegal or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, if known, with the precinct, township, or ward where they voted or offered to vote, shall be set forth in the complaint.

SEC. 83. [**Summons.**].—Upon the filing of such complaint, summons shall issue against the person whose office is contested, in the same manner as in civil actions, and a copy of the complaint shall in all cases accompany the summons.

SEC. 84. [**Trial.**].—The cause shall stand for trial at the expiration of thirty days from the time of service of the summons and complaint, if the court shall then be in session; otherwise, on the first day of the next term thereafter.

SEC. 85. [**Same.**].—The trial shall proceed at the time appointed unless postponed for good cause shown by affidavit, the terms of which postponement are in the discretion of the court.

SEC. 86. [**Proceedings.**].—The proceedings shall be assimilated to those in an action, so far as practicable, but shall be under the control and direction of the court, which shall have all the powers necessary to the right hearing and determination of the matter, to compel the attendance of witnesses, swear them and direct their examination; to punish for contempt in its presence or by disobedience to its lawful mandate, to adjourn from day to day, to make any order concerning immediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case.

SEC. 87. [**Testimony.**].—The testimony may be oral, or by depositions taken as in other actions in the court where the cause is tried. Subpœnas for witnesses may be issued as in other cases, any time after the filing of the complaint.

SEC. 88. [**Amendments.**].—The proceedings shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest. If any part of the causes are held insufficient, they may be amended, but the incumbent will be entitled to an adjournment if he state on oath that he has matter of answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court deem reasonable; but if all the causes are held insufficient, and an amendment is asked, the adjournment shall be at the cost of the contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed.

SEC. 89. [**Process—Fees.**].—The style, form, and manner of service of process and papers, and the fees of officers and witnesses shall be the same as in other cases in the court where the cause is tried.

SEC. 90. [**Compelling witness to testify.**].—The court may require any person called as a witness who voted at such election, to answer touching his

SEC. 80. The remedy by contest is not exclusive. 10 Neb. 63. Mandamus will lie to compel canvassers to count votes according to face of returns. *State v. Stearns*, 11 Neb. 104.

qualifications as a voter; and if he was not a qualified voter in the county where he voted, then to answer for whom he voted; and if the witness answer such questions, no part of his testimony on that trial shall be used against him in any criminal action.

SEC. 91. [**Inspection of ballots by court.**].—If an inspection of the ballots or poll books of any election district in this state shall become necessary for the determination of any election contest before any court, the presiding judge thereof may by order, naming the district or districts, require the proper officer to procure the same from the county clerk, or other person in whose possession or custody the same may be, and such clerk or person shall deliver the same to said officer, who shall deliver them unopened to such presiding judge.

SEC. 92. [**Same.**].—The presiding judge shall open and inspect the same in open court, in the presence of the parties or their attorneys, and immediately after such inspection shall again seal them in an envelope and return them by mail or otherwise to the office of the county clerk in which they were at first required to be filed.

SEC. 93. [**Costs.**].—The contestant and the incumbent are liable to the officers and witnesses for the costs made by them respectively. But if the election be confirmed, or the complaint be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs.

SEC. 94. [**Judgment.**].—The judgment of the court in cases of contested election shall confirm or annul the election according to the right of the matter; or, in case the contest is in relation to the election of some person to an office, shall declare as elected the person who shall appear to be duly elected.

SEC. 95. [**Tie vote.**].—If it appears that two or more persons have—or would have had if the legal ballots cast or intended to be cast for them had been counted—the highest and an equal number of votes for the same office, the persons receiving such votes shall decide by lot, in such manner as the court shall by written order direct, which of them shall be declared duly elected; and the judgment shall be entered accordingly.

SEC. 96. [**Judgment of ouster.**].—When either the contestant or incumbent, shall be in possession of the office, by holding over or otherwise, the court shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the court, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same; and the sheriff shall execute such order as other writs.

SEC. 97. [**Election declared void.**].—When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the election shall be declared void.

SEC. 98. [**Appeal.**].—The party against whom judgment is rendered in cases tried in the county and district court, may appeal to the district or supreme court, and if the appellant be in possession of the office, such appeal shall not supersede the execution of the judgment of the court as provided in the preceding section, unless he give a bond with security, to be approved by the court, in a sum to be fixed by the court, and which shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that he will prosecute his appeal without delay, and that if the judgment appealed from be affirmed, he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered; and said bond shall contain the express consent that judgment may be rendered against the sureties on the appeal as provided in the following section.

SEC. 99. [**Judgment against sureties.**].—If upon the appeal the judg-

ment be affirmed, the appellate court shall render judgment against the appellant and the sureties on his bond, or either of them, for the amount which the appellee is entitled to recover from the appellant on account of such contest, together with costs; but in such case the sureties, or either of them, shall be entitled to produce and examine witnesses concerning the amount of such recovery.

**Sec. 100. [Appeal bond.]**—If upon appeal the appellant shall not be in possession of the office, he shall give bond, with security to be approved by the court where the judgment is rendered, conditioned to pay all costs that may be adjudged against him upon such appeal.

#### VACANCIES.

**Sec. 101. [Vacancies.]**—Every civil office shall be vacant upon the happening of either of the following events at any time before the expiration of the term of such office, as follows: 1. The resignation of the incumbent. 2. His death. 3. His removal from office. 4. The decision of a competent tribunal declaring his office vacant. 5. His ceasing to be a resident of the state, district, county, township, precinct, or ward in which the duties of his office are to [be] exercised, or for which he may have been elected. 6. A failure to elect at the proper election, there being no incumbent to continue in office until his successor is elected and qualified, nor other provisions relating thereto. 7. A forfeiture of office as provided by any law of the state. 8. Conviction of an infamous crime, or of any public offense involving the violation of his oath of office. 9. The acceptance of a commission to any military office, either in the militia of this state or in the service of the United States, which requires the incumbent in the civil office to exercise his military duties out of the state for a period not less than sixty days.

**Sec. 102. [Resignations.]**—Resignations of civil officers may be made as follows: 1. By the governor to the legislature, if in session, if not, to the secretary of state. 2. By senators and representatives in congress, and by all officers elected by the qualified voters of the state, and by judges of the supreme and district courts, district attorneys, and regents of the university, to the governor. 3. By members of the senate and house of representatives, to the presiding officers of their respective bodies, if in session, who shall immediately transmit information of the same to the governor. If such bodies are not in session, to the governor. 4. By all county and precinct officers, to the county board, and by members of the county board to the county clerk. 5. By all township officers, to the township clerk; and by the township clerk to the town board. 6. By all officers holding appointment, to the officer or body by whom they were appointed. Such resignation shall not take effect until accepted by the board or officer to whom the same is made.

**Sec. 103. [Filling vacancies.]**—Vacancies shall be filled in the following manner: In the office of the reporter of the supreme court, by the supreme court. In all other state and judicial district offices, and in the membership of any board or commission created by the state, where no other method is specially provided, by the governor. In county offices by the county board; and in the membership of such board by the county clerk, treasurer and judge. In township offices by the town board, but where the offices of the town board are all vacant the clerk shall appoint, and if there be no town clerk, the county clerk shall appoint. In city and village offices, by the mayor and council or board of trustees.

**Sec. 104. [Expiration of fixed term.]**—Every officer elected or appointed for a fixed term, shall hold office until his successor is elected, or appointed and qualified, unless the statute under which he is elected or appointed expressly declares the contrary. This section shall not be construed in any way to prevent the removal or suspension of such officer during or after his term in cases provided by law.

**Sec. 105. [Appointments.]**—Appointments under the provisions of this chapter shall be in writing, and continue until the next election at which the vacancy can be filled and until a successor is elected and qualified, and be filed with the secretary of state, or proper township clerk, or proper county clerk, respectively.



**Sec. 106. [Possession of official property.]**—When a vacancy occurs in a public office, possession shall be taken of the office room, and of the books, papers, and all things pertaining to the office, to be held until the election or appointment and qualification of a successor, as follows: Of the office of county clerk by his deputy, if there be one, if not, by the county judge; and in case of any delay in the election or appointment of a successor to the county clerk, his deputy shall continue to discharge the duties of the office, being responsible for the conduct and management thereof upon his official bond. Of the office of county treasurer by the sheriff. Of any of the state officers, by the governor, or in his absence or inability at the time of the occurrence, as follows: Of the secretary of state, by the treasurer. Of the auditor of public accounts, commissioner of public lands and buildings, and superintendent of public instruction, by the secretary of state. Of the treasurer, by the secretary of state and auditor of public accounts, who shall make an inventory of the money and warrants therein, sign the same, and transmit it to the governor if he be in the state; and the secretary of state shall take the keys of the safes and desks, after depositing the books, papers, money and warrants therein, and the auditor shall take the key of the office room.

**Sec. 107. [Election to fill vacancies.]**—Vacancies occurring in any state, judicial district, county, precinct, township, or any public elective office, thirty days prior to any general election, shall be filled thereat. Vacancies occurring in the office of county judge [or] justice of the peace, where the unexpired term does not exceed one year, shall be filled by special election. Vacancies occurring in the office of any police magistrate in cities where the unexpired term does not exceed one year shall be filled by appointment, but vacancies occurring in such office less than thirty days prior to any city election, and where the unexpired term exceeds one year shall be filled by special election. And any person so appointed or elected under the provisions of this section shall hold his office for the unexpired term.

**Sec. 108. [Vacancy in congress, or legislature.]**—When a vacancy occurs in the office of representative in congress, or members of the legislature, and the body in which such vacancy exists will convene prior to the next general election, the governor shall order a special election to fill such vacancy at the earliest practicable time, and ten days notice of such election shall be given.

**Sec. 109. [Special elections.]**—The provisions relating to general elections shall govern special elections, except where otherwise provided for.

**Sec. 110. [Canvass.]**—In all cases where special elections are held to fill vacancies in offices mentioned in the preceding subdivision, the board of canvassers shall meet at twelve o'clock m., on the third day after said election, to canvass the votes cast at such election, and the county clerk, within four days after any special election for a member of the legislature, or representative in congress, shall transmit to the secretary of state an abstract of the votes cast at said election, if there be more than one county in the district.

**Sec. 111. [Canvass by state board.]**—Within ten days after said election in the case last mentioned, the board of state canvassers shall meet and canvass the votes cast to fill such vacancy, and if the returns have not been received from all the counties composing said district, they may adjourn to such day as they deem necessary, not exceeding five, for the purpose of receiving said returns.

**Sec. 112. [Repealed act of 1873, G. S. 352: Laws 1877, 143, 146; and all acts inconsistent with the provisions of this act.]**

**Sec. 113. [Provided for act to take effect Sept. 1, 1879.]**

**Sec. 114. [Canvass of vote where county clerk is candidate.]**—Whenever the county clerk of any organized county of this state shall be a candidate for any office created by the laws of this state, or for member of the legislature of this state, it shall be the duty of the probate judge of the proper county to select two qualified electors of the county, who, together with himself, shall

Sec. 114. "An act to provide for canvassing votes in certain cases." Laws 12th Sess. Ter. 1867, 18. Took effect Feb. 13, 1867.

constitute a board of canvassers to canvass the votes polled for the office for which the then county clerk was a candidate; *Provided*, That in the event of the probate judge being a candidate for any office at said election, the county clerk shall canvass the votes as provided by law. The votes shall be so canvassed within the time and in the manner now prescribed by law. [12 Sess. Ter. 1867, 18. G. S. 365.]

#### CHAPTER 27.—ESTRAYS.

**SECTION 1. [By whom taken up.]**—It shall be lawful for any person holding land in this state, by deed, title, bond, or lease, for one or more years, and being in possession thereof, to take up any estray horse, mule, or ass, neat cattle, sheep, or swine, found within his enclosed premises at any season of the year; and any estray found around the premises of any lessee or freeholder between the twentieth day of October and the first day of April, may be taken up by such lessee or freeholder; and any horse, mule, or ass, with any portion of harness attached to them, and any oxen, with yoke, that are believed to have estrayed away from their owners, may be taken up by any person at any time. [R. S. 153. G. S. 368.]

**SEC. 2. [Record of description.]**—It shall be the duty of any person taking up an estray to send a description of the same to the county clerk within ten days after taking it up, and the county clerk shall immediately record the same in a book kept for that purpose, for which he shall receive the sum of twenty-five cents. The person taking up the estray shall, within twenty days thereafter, procure the publication of the description of such animal in any newspaper published within the county.

**SEC. 3. [Publication.]**—The proprietor of such newspaper shall publish said description for at least five consecutive weeks, and shall receive therefor the sum of three dollars; *Provided*, That if two or more estrays of the same species shall be taken up by the same person at the same time, they shall be included in the same publication; and in such case the aforesaid publisher shall receive no more than for one of such species, except, where the number so described shall exceed three, he shall receive one dollar for each estray beyond that number included in such publication.

**SEC. 4. [Owner may reclaim.]**—The owner of an estray may, at any time previous to its sale, reclaim the same on proving said property by oath or otherwise, and paying for the advertisement, and a reasonable compensation for any other necessary expenses incurred by the person taking up said estray.

**SEC. 5. [Arbitrators.]**—In case the parties cannot agree upon the amount of the expenses incurred, they may each choose a disinterested person to act as arbitrators, and the two chosen may choose a third. The decision of the arbitrators shall be final.

**SEC. 6. [Disposition.]**—When an estray, if it be a sheep, swine, or calf, under the age of one year, has not been reclaimed within six months after the advertising the same, it shall become the property of the person taking it up, without further proceedings. If the estray be a horse, mule, ass, bull, cow, or steer, over the age of two years, it must be reclaimed within six months from the time it was first advertised. If the estray is an animal over the age of one year, and not over the age of two years, it must be reclaimed within six months from the time it was first advertised. If any estray included in the last two named classes shall not be reclaimed within the time specified respectively, the person taking up the estray shall notify a justice of the peace of the county wherein said estray was taken up, who shall appoint two disinterested persons, and administer to them an oath or affirmation to faithfully and truly appraise said estray, and said persons, upon actual view of said property, shall appraise the same at its true value, and make due return thereof, in writing, to said justice of the peace, who shall appoint a day of sale, and cause notice of the time and place of sale, to be published at least five weeks consecutively before the day

of sale, in a newspaper printed in said county and by posting up written or printed notices in three public places in the precinct where the estray is to be sold; and in case there is no newspaper printed in said county, there shall be three additional written or printed notices posted up at the county seat of said county, and on the day appointed said estray shall be sold by said justice to the highest bidder in cash; and the proceeds thereof, after deducting the costs of the proceedings and the expenses of keeping said estray, shall be paid to the county treasurer within ten days after the sale, subject to the order of the owner, provided the owner of said estray shall establish his ownership to the same, to the satisfaction of the county treasurer of said county, within one year from the day of sale; and if said balance is not so claimed within the time so specified, it shall be placed by said treasurer to the credit of the general school fund of said county.

**SEC. 7. [Place of sale.]**—The place of sale shall be at the residence of the person taking up the estray.

**SEC. 8. [Price.]**—When an estray is sold, it must bring at least two-thirds of the appraised value. In case it does not, the animal shall be re-appraised, and again offered for sale one week after the day appointed for the first sale, and no advertisement shall be necessary for the second sale.

**SEC. 9. [No sale, when.]**—When the appraisers think that the animal will not bring more than enough to defray the necessary expenses of the sale and advertisement thereof, said sale shall be dispensed with, and the person who took up the animal shall, on the payment of expenses, be the owner thereof.

**SEC. 10. [Proceeds of sale.]**—The money received from the sale of an estray shall go into the county school fund, all expenses first being paid.

**SEC. 11. [Penalties.]**—Any person violating section ten of this chapter shall be liable to a fine of not less than twenty dollars nor more than two hundred dollars.

**SEC. 12. [Appraisal.]**—The appraisers of estrays shall estimate the value of the labor, trouble and expense of the person in taking up and keeping an estray—taking into consideration the services rendered by the animal.

**SEC. 13. [Fees of appraisers.]**—The appraisers of estrays shall receive fifty cents each for each appraisal, but when more than one animal is taken up at any one time by one person, they shall all be appraised as one, and the appraisers shall be entitled to compensation for but one appraisal. The justice of the peace shall receive for his services the sum of one dollar and fifty cents.

**SEC. 14. [Payment of expenses.]**—The advertisement, the appraisal, and the services of the justice of the peace, shall be paid by the person taking up the estray, and he shall receive the same, with fifty per cent. additional, from the proceeds of the sale of the estray.

**SEC. 15. [Gelding.]**—If any horse or mule not gelded, two years old or upwards, shall be found running at large, it shall be lawful for any person to take up such horse or mule, and forthwith give notice to the owner or keeper, if he be known to the taker-up, and if the owner or keeper do not appear within three days thereafter and pay to the said taker-up two dollars as compensation for his trouble, the taker-up shall proceed to advertise said horse or mule, and the same proceedings shall be had in every respect as hereinbefore provided in cases of estray horses or mules; *Provided*, That the taker-up, may, after the expiration of twenty days from the time of advertising, geld, or procure to be gelded, the said horse or mule, which shall be done at the risk and expense of the owner.

**SEC. 16. [Death of estray.]**—Should any animal taken up as an estray die while in possession of the person taking it up, he shall not be liable for the loss unless its death was the result of mistreatment or wilful neglect.

## CHAPTER 28.—FEES.

**SECTION 1.** The salaries and fees of the several officers hereinafter named shall be as follows: [R. S. 157. G. S. 871.]

SECS. 1-22, 28-38. Chap. XIX, R. S. 157. Chap. 22, G. S. 371. SECS. 26-8, G. S. 383, relating to commencement fee in supreme and district courts were repealed 1877, 68.

**SEC. 2. [Clerk of the supreme court.]**—Docketing each cause, civil or criminal, to be charged in each case but once, seventy-five cents. Issuing summons in error, writ of error, certiorari, writ of injunction or mandate, one dollar. Dismissal, discontinuance, or continuance, twenty-five cents. Entering each cause on the bar and court calendar fifteen cents. Issuing and docketing execution or order of sale, one dollar. Taking affidavit, twenty-five cents. Filing motion, rule, affidavit or other paper, ten cents. Issuing attachment, and filing motion therefor, seventy-five cents. Indexing each cause, direct and reverse, each docket, ten cents. Entering judgment, decree or order on the journal, twenty-five cents. For each ten words after the first one hundred words, one cent. Entering minute of judgment, decree or order, on the appearance docket, fifteen cents. Making copy of process, pleadings, record or other paper, or any part thereof, for each ten words, one cent. Entering satisfaction, twenty-five cents. Certificate and seal, fifty cents. Every search, where no other services are rendered to which any fee or fees are attached, fifteen cents.

**SEC. 8. [Clerk of the district court.]**—Docketing each cause, seventy-five cents. Issuing summons, order of arrest, order of attachment, order of replevin, citation, or any *mesne* process, and filing return, fifty cents. Entering voluntary appearance of defendant, twenty-five cents. Taking bail-bond, twenty-five cents. Filing petition, pleading, indictment, or any other paper, ten cents. Issuing attachment and filing motion therefor, seventy-five cents. Entering return of any writ or order, other than of execution, order of sale, or of attachment, twenty cents. Entering each cause on the bar and court calendar of each term of the court, fifteen cents. Indexing each cause, direct and reverse, each docket, ten cents. Drawing petit jurors, and issuing venire therefor, fifty cents. Attending to the striking of special jury and issuing venire, one dollar. Impanelling jury and administering oath, twenty-five cents. Certifying to the county commissioners at the end of each term, the names of grand and petit jurors, and their terms of service and mileage, to be paid by the county, one dollar and fifty cents. Issuing subpoena, and seal, twenty-five cents. Swearing and entering appearance of each witness, fifteen cents. Entering judgment on the journal, twenty-five cents. For each ten words after the first one hundred words, one cent. Entering verdict on the journal, twenty-five cents. Transcribing judgment or order on appearance docket, twenty cents. Drawing and issuing venire for grand jury, and impanelling the same, to be paid by the county, one dollar and twenty-five cents. Dismissal, discontinuance or continuance, twenty-five cents. Taxing costs, each cause, thirty-three cents. Making complete record, for each ten words, one cent. Copy of process, pleadings, record or paper filed, or any part thereof, for every ten words, one cent. Certificate and seal, twenty-five cents. Filing and entering petition for *habeas corpus*, twenty-five cents. Issuing writ of *habeas corpus*, one dollar. Issuing and docketing execution or order of sale, seventy-five cents. Entering return of execution, order of sale, or order of attachment, for each ten words, one cent. Indexing execution or order of sale, direct and reverse, each docket, ten cents. Taking acknowledgment of deed or other instrument, fifty cents. Taking affidavit, except those required to pleading, forty-five cents. Each certificate or seal not herein provided for, twenty-five cents. Entering satisfaction of judgment, twenty-five cents. Every search made by the clerk, where no other service is rendered to which any fee or fees are attached, fifteen cents. Entering mandate and proceedings of supreme court, twenty-five cents. Entering transcript of judgment of justice of the peace, forty cents. Entering and docketing appeal from judgment of justice of the peace, forty cents. Suggesting death of party or diminution of record, fifteen cents. Substituting party on the record, fifteen cents. Commission to examine witnesses, fifty cents. Entering confirmation of sale, twenty-five cents. Recording declaration of intention to become a citizen of the United States, and certified copy thereof under seal, fifty cents. Recording final admission of alien to the right of citizenship, and certified copy thereof under seal, fifty cents. Fil-

ing and entering motion, rule or default, ten cents. Taking recognizance or entering forfeiture of recognizance, twenty-five cents. Arraignment of defendant, twenty-five cents. Entering retraction of plea or *nolle prosequi*, twenty cents. Issuing *capias*, warrants, or other process under seal in criminal cause, fifty cent. Entering remittitur, fifteen cents. Each clerk of the district and supreme court shall keep a docket in which he shall enter the costs chargeable and taxable against each party in any suit pending in said courts respectively; and he is hereby empowered, at any time, to make out a statement of such fees, specifying each item of the fees so charged and taxed, under the seal of the court, which fee-bill, so made under seal of said court, shall have the same force and effect as an execution; and the sheriff to whom said fee-bill shall be issued, shall execute the same as an execution, and shall have the same fees therefor; and the clerk shall have the same fees for issuing such bill that he is entitled to for the issuance of an execution; *Provided*, That the clerk shall not enter in such docket any fees of any officer claiming the same, unless such officer shall duly return an itemized bill of the same.

SEC. 4. [Register in chancery].—Docketing each cause, seventy-five cents. Taking affidavit, except those required to pleading, twenty-five cents. Issuing subpoena in chancery, order of injunction, citation, or any mesne process under seal, fifty cents. Filing bill, pleading, or other paper, ten cents. Approving bail bond, twenty-five cents. Entering return on subpoena, injunction, citation, or any mesne process, twenty-five cents. Entering each cause on the bar and court calendar, each term, ten cents. Indexing each cause, direct and reverse, each docket, ten cents. Entering decree, fifty cents, and order on the journal, twenty-five cents. And for each ten words after the first one hundred words, one cent. Transcribing decree or order on appearance docket, ten cents. Dismissal, discontinuance or continuance, twenty-five cents. Taxing costs, each cause forty cents. For making complete record, transcript, or copy of process, pleadings, record, or other paper filed, or any part thereof, for each ten words, one cent. Certificate and seal, twenty-five cents. Entering allowance of injunction, fifty cents. Issuing execution or order of sale, seventy-five cents. Entering return of execution or order of sale, for each ten words, one cent. Entering satisfaction of decree, twenty-five cents. Filing and entering notice of appeal, fifteen cents. Filing and entering motion or rule, fifteen cents. Every search, where no other service is rendered to which any fee or fees are attached, fifteen cents.

SEC. 5. [Sheriff].—Serving *capias* with commitment or bail-bond and return, one dollar. For serving search warrant, one dollar. For arresting under search warrant, one dollar for each person so arrested. Serving summons, subpoena in chancery, order of attachment, order of replevin, writ of injunction, *scire facias*, citation, or other writ of mesne process, and return thereof, fifty cents. For each defendant after the first in the same case, twenty-five cents. Copy of summons, subpoena in chancery, order of attachment, twenty-five cents. Serving subpoena for witnesses, each person served, twenty-five cents. Taking and filing replevin, bond or other indemnification, to be furnished and approved by the sheriff, fifty cents. Making copy of any process, or bond, or paper, other than herein provided for, twenty-five cents. Traveling expenses for each mile actually and necessarily traveled, five cents. Levying writ of execution, and return thereof, one dollar. Levying writ of possession, with the aid of the county, two dollars. Levying writ of possession, without the aid of the county, one dollar. Summoning grand jury, not including mileage, to be paid by the county, five dollars. Summoning petit jury, not including mileage, to be paid by the county, six dollars. Summoning special jury, for each person impaneled, twenty-five cents. Calling jury for trial of cause, twenty-five cents. Serving notice of motion, or other notice, or order of court, fifty cents. Executing writ of *habeas corpus*, and return, one dollar. Serving writ of restitution, and return, one dollar. Calling inquest, to appraise lands and tenements levied on by execution, fifty cents. Calling in-

quest, to appraise goods and chattels taken by order of attachment, or replevin, fifty cents. Advertisement of sale in a newspaper, in addition to the price of printing, fifty cents. Advertising in writing for sale of real or personal property, one dollar. Executing writ, or order of partition, two dollars. Making deeds for lands sold on execution or order of sale, one dollar. Committing prisoner to prison, fifty cents. Attending before judge, or court, in criminal cases, one dollar. Opening district court and attending thereon per day, to be paid by the county, two dollars. Commission on all money received and disbursed by him on execution, or order of sale, order of attachment, decree, or on sale of real or personal property, shall be for each dollar not exceeding four hundred dollars, three cents; for every dollar above four hundred dollars and not exceeding one thousand dollars, two cents; for every dollar above one thousand dollars, one cent; *Provided*, That in all cases where no money is received or disbursed by him, no percentage shall be allowed. For executing death warrant, such fee as the county commissioners shall deem reasonable and just, to be paid by the county. For guarding prisoners, when it is actually necessary, two dollars per day, to be paid by the county. Where there are prisoners confined in the county jail, one dollar and fifty cents per day shall be allowed the sheriff as jailer. For boarding prisoners per day, not exceeding seventy-five cents per day, nor more than three and one-half dollars per week, when the prisoners are confined more than six days. [Amended 1877, 40.]

**SEC. 6. [Services in county court].**—For performing the duties required by law to be performed by them in the county court, sheriffs shall receive the same fees as are allowed for similar service in the district court, except for attendance on the county court, to be taxed against the proper party or parties by the county judge. [Id.]

**SEC. 7. [Coroner].**—For viewing a dead body, ten dollars. Summoning and qualifying an inquest, fifty cents. Drawing and returning inquisition, for each ten words, one cent. For physician making *post mortem* examination of dead body, not less than ten dollars each, and in cases requiring careful and difficult dissection, or an analysis of poisons, not to exceed in any case fifty dollars, to be paid out of any goods, chattels, lands and tenements of the slayer (in case of murder or manslaughter), if he hath any, otherwise by the county, with mileage or distance actually traveled to and from the place of viewing the dead body. For all other services rendered, the same fees as are allowed the sheriff, and mileage. [Amended 1869, 166.]

**SEC. 8. [Probate (county) judge].**—Docketing each cause, twenty-five cents. Entering appearance of parties, fifteen cents. Taking affidavit, twenty-five cents. Issuing summons or other writ under seal, fifty cents. Filing petition, answer or any other pleading or paper necessary in any case, except the accounts current and vouchers of executor, administrators or guardians, five cents. Probate of will, and entry thereof, two dollars. Letters testamentary or of administration or guardianship, under seal, and recording the same, two dollars. Taking and approving bond, twenty-five cents. Recording bond, will, sale bill, settlement of executor, administrator or guardian, for every ten words, one cent. For copy of bond, will, sale bill, inventory, settlement, pleading, decree, record, or other document or paper, for every ten words, one cent. Filing an account and vouchers of executor, administrator, or guardian, for settlement, and entering the same on minutes of the court, fifty cents. Examining a partial or final settlement of executor, administrator or guardian, when the vouchers do not exceed fifty, one dollar. Every additional voucher, over fifty, two cents. Issuing citation, fifty cents. Giving notice of time of settlement, twenty-five cents. Issuing marriage license, and administering oath when necessary therein, one dollar and twenty-five cents. Hearing and deciding application in contested cases on petition to sell land, two dollars. Entering judgment, fifty cents. Issuing execution or order of sale, fifty cents. Making appointment of, and issuing commission to commissioners or appraisers, fifty cents. Filing and recording report of com-

missioners, or of the proceedings and judgment of the district court on appeal from the decision of the commissioners, fifty cents. For every additional ten words after the first hundred words, one cent. Making and recording order or decree, for every ten words, one cent. Recording report of commissioners to make partition, for the first hundred words, seventy-five cents. For every ten words after the first hundred, one cent. For making copy of same, for every ten words, one cent. Certificate and seal, twenty-five cents. Filing and entering motion, fifteen cents. Issuing subpoena, and seal, fifty cents. Each name therein after the first, five cents. Every search when made by probate judge where no service is rendered to which any fee or fees are attached, fifteen cents. The price of printing notices required by law to be printed in some newspaper, shall be allowed in addition to the fees herein allowed.

**SEC. 9. [Fees of probate judge as justice.]**—For any service performed by the probate judge in any matter within the jurisdiction of justices of the peace he shall be allowed the same fees as are allowed by law to justices of the peace for like services, and no more, and in all civil actions triable in the probate court, of which a justice of the peace has not jurisdiction, the probate judge shall be entitled to receive the trial fee as is now allowed to justices of the peace for like service in justices' court. [Amended 1875, 88]

**SEC. 10. [Master in chancery.]**—For copying any paper or instrument in writing, for taking testimony, for every ten words, one cent. Swearing each witness, ten cents. Making reports of facts or conclusions in law, or upon exceptions, for every ten words, one cent. And such additional fee as the court shall allow, not exceeding in any one cause, the sum of ten dollars. Certificate and seal, twenty-five cents. Taking affidavit, twenty-five cents. Advertisement of the sale of property in newspaper, in addition to the price of printing, sixty cents. For making sale, one dollar. Report of sale, one dollar. Making deed for land sold on decree or order of sale, in addition to the price of revenue stamp, two dollars. Commission on the amount of purchase money received and disbursed by him of all the property contained in each decree or order of sale, shall be, for each dollar not exceeding three hundred dollars, two cents. For each dollar above three hundred and not exceeding one thousand dollars, one cent. For every dollar above one thousand dollars, one-half cent. In all cases in the district or supreme court, when persons in whose favor the execution or order of sale is issued, shall bid in the property sold on execution or decree, the sheriff or master making such sale shall receive five dollars as his per cent. on such sale, and no more.

**SEC. 11. [Justice of the peace.]**—Docketing each cause, twenty-five cents. Taking affidavit, twenty-five cents. Filing petition, bill of particulars, or other paper necessary in a cause, ten cents. Issuing summons, capias, subpoena, order of arrest or venire for jury, fifty cents. Issuing execution, order of sale, order of attachment, order of replevin, and entering return therein, fifty cents. Issuing writ of restitution, and entering return therein, one dollar. Administering oath or affirmation to witness, ten cents. Entering judgment in any cause, fifty cents. Taking acknowledgment of deed or other instrument, fifty cents. Swearing jury, twenty-five cents. Copy of appeal, certiorari, or copy of pleadings or others papers for any purpose, for each ten words, one cent. Taking depositions, for each ten words, one cent. Certificate and seal, twenty-five cents. Issuing warrant or mittimus, one dollar. Taking information or complaint, fifty cents. Discharge to jailer, twenty-five cents. Dismissal, discontinuance, or satisfaction, twenty-five cents. Written notice to party or parties, ten cents. Filing notice and opening judgment for rehearing, thirty cents. Each adjournment, fifty cents. Performing marriage ceremony, three dollars. Each days attendance upon trial of a cause, after the first day, one dollar. Taking and approving bail bond, twenty-five cents. Entering voluntary appearance of defendant, twenty-five cents. Issuing attachment, fifty cents. Entering motion or rule, ten cents. Rule of reference to arbitrators, fifty cents. Entering award of arbitrators, twenty-five

cents. Commission on money collected on judgment without execution, shall be one per cent. on the amount.

SEC. 12. [Constables.]—Constables shall be allowed the same fees as are allowed to sheriffs for like services.

SEC. 13. [Register of deeds.]—For recording deed, mortgage, or other instrument, for the first two hundred words, seventy-five cents. For each ten words thereafter, one cent. Copy of record, for each ten words, one cent. Certificate and seal, twenty-five cents. Making certified abstract of title, for the first deed or transfer, one dollar. And for each additional deed or transfer, ten cents. Entering satisfaction of mortgage or lien, twenty-five cents.

SEC. 14. [County clerk.]—Issuing certificate of election, twenty-five cents. For performing the duties of clerk to the county commissioners, and attending to the business of the county, such salary per annum, to be paid by the county quarterly, as the commissioners of the county shall allow, not exceeding in any year the sum of four hundred dollars. For each certificate and seal in other cases, twenty-five cents. For recording each certificate of marriage, twenty-five cents.

SEC. 15. [Jurors.]—Grand and petit jurors shall receive for their services two dollars for each day employed in the discharge of their duties, and mileage at the rate of five cents for each mile necessarily traveled. [Amended 1867 § 2, 90.]

SEC. 16. [Surveyor.]—For surveying all lands, except town lots, per day, four dollars. For each lot laid out and platted in any city or town, one dollar. For each copy of plat and certificate, fifty cents. Recording each survey, twenty-five cents. For each mile actually and necessarily traveled in going to and from work, ten cents. For establishing each corner, twenty-five cents. For ascertaining the location of a city or town lot in an old survey, and measuring and marking the same, two dollars. For surveying county roads, per day, five dollars. Expenses of necessary assistance shall, in addition be paid by the party or parties requiring the work to be done. [Amended 1869, 157.]

SEC. 17. [Printers.]—For printing and publishing legal advertisement in newspapers, as follows: Each square, of ten lines, for the first insertion one dollar. Each subsequent insertion, for each square of ten lines, fifty cents. Each legal advertisement under ten lines shall be deemed a square, and each fractional part of a square shall be counted as a full square. For publishing list of lands upon which taxes are delinquent, each description twenty cents. For publishing list of town lots on which taxes are delinquent, each description ten cents; *Provided*, That the county commissioners of Otoe county have control of printing the delinquent tax list in said county. [Amended 1869, 159.]

SEC. 18. [Interpreters.]—Interpreters or translators may be allowed such compensation for their services as the court shall certify to be reasonable and just, to be taxed and collected as other costs, but the same shall not exceed two dollars per day.

SEC. 19. [Notaries public.]—For each protest, (\$1.00) one dollar; for recording the same, (50c.) fifty cents; for each notice of protest, (25c.) twenty-five cents; for taking affidavit and seal, (25c.) twenty-five cents; for administering oath or affirmation, (10c.) ten cents; for taking deposition, each ten words, (2c.) two cents; for each certificate and seal, (25c.) twenty-five cents; for taking acknowledgment of deed or other instrument, (50c.) fifty cents; for each mile traveled in serving notice, (5c.) five cents. [Amended 1875, 84.]

SEC. 20. [County treasurer.]—Each county treasurer shall receive for his services the following fees: On all moneys collected by him for each fiscal year, under three thousand dollars, ten per cent. For all sums over three thousand dollars and under five thousand dollars, four per cent. On all sums over five thousand dollars, two per cent. On all sums collected, per centage

SEC. 14. See also sec. 47, 48, this chapter.

SEC. 20. The fee of five per cent. allowed by 6th clause of this section cannot be collected by action from the purchaser when treasurer fails to collect the amount bid at the tax sale. 5 Neb. 272.



shall be allowed but once; and in computing the amount collected, for the purpose of charging percentage, all sums, from whatever fund derived, shall be included together, except the school fund. For going to the seat of government to settle with the state treasurer, and returning therefrom, a traveling fee of ten cents per mile, to be paid out of the state treasury. For advertising and selling lands for delinquent tax, an additional fee of five per cent., to be collected only in case such lands are actually sold, and then in cash of the person buying the same; but for all other cases and services, the treasurer shall be paid in the same *pro rata* from the respective funds collected by him, whether the same be in money, state, or county warrants. On school moneys by him collected, he shall receive a commission of but one per cent. And in all cases where persons outside of the state apply to the treasurer by letter to pay taxes, the treasurer is authorized to charge a fee of one dollar for each tax receipt by him sent to such person.

**SEC. 21. [Assessor].**—Each assessor shall receive for his services the following fees, and no more: for each and every day actually engaged, the sum of three dollars.

**SEC. 22. [County commissioners].**—County commissioners shall each be allowed for the time they shall be necessarily employed in the duties of their office the sum of three dollars per day, and five cents per mile, to be paid out of the general county fund.

**SEC. 23. [Witnesses].**—Witnesses before the district court and grand jury shall receive two dollars for each day actually employed in attendance on the court or grand jury, and if the said witness shall reside more than one mile from the court house, or place where the court is held, five cents for each mile necessarily traveled. [Amended 1867 § 3, 90.]

**SEC. 24. [Officers of election].**—The judges and clerks of election, also the board of canvassers for the county, at all general elections, shall receive the following pay: For each days service, each person shall receive two dollars. The person making the return of the election to the county clerk, shall receive the additional sum of five cents for each mile necessarily travelled. [1867 § 4, 89.]

**SEC. 25. Witnesses and jurors** before a justice of the peace or probate court shall receive for each days attendance one dollar, and mileage at the rate of five cents for each mile necessarily traveled. [1867 § 4, 90.]

**SEC. 26. [Fees in advance].**—In all cases where writs of attachment against property are issued, the officers to whom such writ is directed for service, shall be empowered to demand in advance, and receive before said service, the regular fees for service of papers, and in addition thereto, a sum of money sufficient to defray the expenses incurred for work and labor in the taking possession of, or removal of, the property ordered attached, and for the safe keeping thereof; said sum to be taxed in the costs. [1871 § 1, 116.]

**SEC. 27. [Same].**—In all cases of attachment, when the property ordered attached consists of merchandise or miscellaneous goods, and time is absolutely necessary to properly appraise the same as required by law, the residents of the county, summoned to appraise said property, shall be entitled to a just and fair compensation for their time and labor and mileage, when necessary to go any distance exceeding one mile; and the sheriff or other officer is empowered to demand and collect the same as other fees. [Id. § 2.]

**SEC. 28. [Jury fee].**—There shall be paid by the party against whom a verdict is rendered, in the district court, a jury fee of five dollars, to be taxed in the bill of costs, and when collected, to be paid into the county treasury; and for each trial by the court, a fee of one dollar, to be taxed collected and paid in a like manner, for the use of the county. [R. S. 170. G. S. 884.]

**SEC. 29. [Same].**—In each criminal case tried by a jury, upon a conviction of the defendant or defendants, there shall be taxed in the bill of costs, a fee of six dollars as a jury fee, and judgment therefor shall be rendered against such

SEC. 24-5. "An act to prescribe the fees of certain officers." 1867, 89.

SEC. 26-7. "An act prescribing fees for sheriffs in cases of execution and attachment." Laws 1871, 116.

defendant or defendants, which sum, when collected, shall be paid into the county treasury, for the use of the county.

**SEC. 80. [Taxing costs.]**—In all actions, motions and proceedings in the supreme, district or justice's courts, the costs of the parties shall be taxed and entered on the record separately.

**SEC. 81. [Advance fees.]**—The clerks of the supreme court and of each district court, the register in chancery, probate judge, sheriff, justice of the peace, constable, or register of deeds, may in all cases require the party for whom any service is to be rendered, to pay the fees in advance of the rendition of such service, or give security for the same, to be approved by the officer.

**SEC. 82. [Bill of particulars.]**—It shall be lawful for any person to refuse payment of fees to any officer who will not make out a bill of particulars, signed by him, if required, and also a receipt or discharge signed by him for fees paid.

**SEC. 83. [Items.]**—No sheriff, coroner, or constable shall be entitled to receive on *mesne* or final process, any fees provided for in this chapter, unless he shall return upon the process upon which any charge shall be made, the particular items of such charge.

**SEC. 84. [Penalty.]**—If any officer whatever, whose fees are hereinbefore expressed and limited, shall take greater fees than are so hereinbefore limited and expressed, for any service to be done by him in his office, or if any such officer shall charge or demand, and take any of the fees hereinbefore ascertained and limited, where the business for such fees are chargeable shall not be actually done and performed, such officer shall forfeit and pay to the party injured, fifty dollars, to be recovered as debts of the same amount are recoverable by law.

**SEC. 85. [Tables to be posted.]**—All officers, whose fees are by this chapter determined, are hereby required to make fair tables of their respective fees, and keep the same in their respective offices in some conspicuous place, for the inspection of all persons who shall have business in said offices; and if any such officer shall neglect to keep a table of fees in his office as aforesaid, such officer shall, for each day of such neglect so to keep a table of fees of his office, forfeit and pay the sum of five dollars, to be recovered by action at law, before any justice of the peace, for the use of the county in which the offense shall have been committed.

**SEC. 86. [Bailiffs.]**—It shall be the duty of the district court, at each term of court, to appoint a competent number of bailiffs to wait on the grand jury and court during the term, who shall be allowed for their services two dollars per day, to be paid by the county.

**SEC. 87. [Revenue stamps.]**—All officers whose fees are hereinbefore limited, and expenses are allowed, may charge and demand as hereinbefore allowed, the price of all United States revenue stamps required to be used in the discharge of their official duties, and the same shall be taxed with costs, as in other cases of fees.

**SEC. 88. [Oath.]**—Every officer, whose salary is in the nature of a per diem, shall, before drawing any money on account of such salary, subscribe an oath or affirmation in the following form:

I, A. B., do solemnly swear (or affirm), that I have been——days necessarily and diligently engaged in the duties of my office as (*insert title of officer.*)

Attest by——

(*Officer's name.*)

Any disbursing officer of this state who shall pay any portion of the salary of any officer aforesaid before such oath or affirmation is subscribed, shall forfeit to this state the sum of fifty dollars, which forfeiture may be sued for by any tax-payer.

#### UNCLAIMED WITNESS FEES.

**SEC. 89. [Notice.]**—That in all cases where witness fees shall be paid to

SEC. 34. This section is not in violation of sec. 5, art. VIII of the constitution requiring "all fines, penalties" etc. to be paid into the school fund. 9 Feb. 184.

SECS. 39-41. "An act to dispose of witness fees in certain cases." Laws 1877, 225. Took effect June 1, 1877.

the clerk of the district court, county judge, or justice of the peace, in pursuance of judgment of any of said courts, and shall remain in their or either of their hands uncalled for by the parties entitled thereto for the period of six months after the same have been paid in as aforesaid, it shall be the duty of the said clerk, county judge and justice of the peace, to prepare a list under oath of the causes in which said fees have been paid and remain uncalled for, with the amounts in each cause and the date of judgment, and present and file the same with the county commissioners of the respective counties on the first Tuesday in January, April, July and October in each year; and it shall be the duty of said county commissioners, within twenty days after the filing of said report, to cause a notice to be published in some weekly newspaper of general circulation published in the county, for at least two consecutive issues of said paper, a notice, as follows:

*To whom it may concern:* Report having been made to the board [of] county commissioners of ——— county, Nebraska, by the clerk of the district court, county judge, and the several justices of the peace of said county, which report shows that there is now and has been for the last six months remaining in the hands of the said district clerk, county judge and justices of the peace, certain witness fees which have been uncalled for. Now, if such fees shall not be called for within six months from (insert the day upon which the first report was made) the same will be considered as forfeited, and will be paid into the common school fund of said ——— county. [1877 § 1, 225.]

**Sec. 40. [Paid into school fund.]**—All fees remaining in the hands of such district clerks, county judge or justice of the peace for the period of six months after the same has been reported by them to the county commissioners, shall be paid over to the treasurer of the county, who shall receipt in duplicate for the same, one of which receipts shall be filed with the county clerk, and all such fees shall be credited to the common school fund of the county. [Id. § 2.]

**Sec. 41. [Examination of dockets.]**—It shall be the duty of the county commissioners to examine the books and dockets of the several officers herein named, and if they find that they have failed to report or pay over any of the money or fees intended to be paid over or reported by any of the provisions of this act, it shall be the duty of said county commissioners to notify such officers to pay over such moneys, or fees, at once, and if said officer shall fail to pay over such fees or moneys to the county treasurer as hereinbefore provided, it shall be the duty of said county commissioners, and they are hereby authorized to commence suit in any court having jurisdiction, against the officer (and his bondsmen) offending against the provisions of this act; said action shall be commenced in the name of the president of the board of county commissioners for the use of the common schools of their respective county. [Id. § 3.]

#### REGULATIONS CONCERNING FEES OF COUNTY OFFICERS.

**Sec. 42. [Fees in excess of certain amounts.]**—That every county judge, county clerk, county treasurer and the sheriff of each county, whose fees shall in the aggregate exceed the sum of fifteen hundred dollars each for county judge and county clerk, and two thousand dollars each for sheriffs and county treasurers per year shall pay such excess into the treasury of the county in which they hold their respective offices; *Provided, however,* That in counties having over twenty-five thousand inhabitants, the county treasurer shall receive the sum of three thousand dollars per annum, and shall be furnished by the county commissioners the necessary clerks or assistants, whose combined salary shall not exceed the sum of twenty-four hundred dollars per annum. The sheriff shall receive the sum of twenty-five hundred dollars per annum, also the necessary jail guard and one deputy, and the salary of such deputy shall be nine hundred dollars per annum. The county clerks of such counties shall receive the sum of twenty-five hundred dollars per annum, and he shall have one deputy whose salary shall be one thousand dollars per annum; *And provided further,* That [if]

the duties of any of the officers above named in any county of this state shall be such as to require one or more assistants, or deputies, then such officers may retain an amount necessary to pay for such assistants or deputies, not exceeding the sum of seven hundred dollars per year, except as above provided in counties having over twenty-five thousand inhabitants, for each of such deputies or assistants, but in no instance shall such officers receive more than the fees by them respectively and actually collected, nor shall any money be retained for deputy service unless the same be actually paid to such deputy for his service; *And provided further*, That neither of the officers above named shall have any deputy or assistants unless the board of county commissioners shall, upon application, have found the same to be necessary, and the board of county commissioners shall in all cases prescribe the number of deputies or assistants, the time for which they may be employed, and the compensation they are to receive. [1877 § 1, 215.]

SEC. 43. [**Report to county board.**].—Each of the officers named in section one of this act shall on the first Tuesday of January, April, July and October of each year make a report to the board of county commissioners under oath showing the different items of fees received, from whom, at what time and for what service, and the total amount of fees received by such officer since the last report, and also the amount received for the current year. [Id. § 2.]

SEC. 44. [**Fee book.**].—Each of the officers named in section one of this act shall keep a book, which shall be provided by the county, and which shall be known as the fee book, and shall be a part of the records of such office, and in which shall be entered each and every item of fees collected, showing in separate columns, the name of the party, from whom received, the time of receiving the same, the amount received, and for what service the same was charged. [Id. § 3.]

SEC. 45. [**Penalty.**].—Any of the officers named in section one of this act, who shall omit to comply with the provisions of this act, or shall fail or neglect to keep a correct account of the fees by him received, or shall fail and neglect to make a report to the board of county commissioners as herein provided, or shall wilfully or intentionally omit to charge the fees provided by law, with intent to evade the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall for each offense be fined in any sum not less than twenty-five dollars, nor more than one hundred dollars; and any officer named in this act who shall make a false report under oath, shall be guilty of perjury, and punished accordingly. [Id. § 4.]

SEC. 46. [**Fees belong to general fund.**].—All fees paid into the treasury of any county under the provisions of this act, shall be applied to the general fund of such county, and shall be distributed as provided by law. [Id. § 5.]

#### NUMERICAL INDEX.

SEC. 47. [**Compensation for transferring records.**].—County clerks for compiling the transfers from the records of their office shall receive for each transfer the sum of fifteen cents, or such other sum—not exceeding fifteen cents—as the county commissioners and the county clerk may agree upon, to be paid by the county. [1881 § 1, chap. 41.]

SEC. 48. [**Entries on numerical index.**].—For entering each instrument presented for record in the numerical index after the completion of said index the clerk shall receive the sum of fifteen cents to be paid in advance by the person offering the instrument for record. [Id. § 2.]

#### CHAPTER 29.—FERRIES.\*

SECTION 1. [**License.**].—No person shall be permitted to keep a ferry across any stream running through or bounding on any county in this state without having

SECS. 42-6. "An act to regulate the fees of county judges, county clerks, sheriffs and county treasurers." Laws 1877, 215. Took effect Jan. 1, 1878. 7 Neb. 493. 9 Id. 87.

SECS. 47-48. "An act to provide for the compensation of county clerks for compiling numerical index from the records in their offices in counties in which there had been no numerical index kept prior to Sept. 1st, 1879." Approved and took effect March 2, 1881. Laws 1881, 221.

\*NOTE.—Chap. XX, R. S. 173. Chap. 23, G. S. 386.

first obtained a license from the board of county commissioners of the proper county for that purpose, as hereinafter provided. [R. S. 173. G. S. 386.]

**SEC. 2. [Notice of application.]**—The person applying for such license shall produce satisfactory evidence to the board of county commissioners, by affidavit of the applicant or otherwise, of his having given notice by advertisement, set up in at least three public places in the precinct or neighborhood where the ferry is proposed to be kept, twenty days prior to the sitting of the board of commissioners, of his intention to apply to such board, at their next regular term, for license to keep such ferry.

**SEC. 3. [County board may grant license.]**—The board of county commissioners being satisfied that the notice hereby required has been given, that a ferry is needed at said place, and that the applicant is a suitable person to keep the same, are hereby authorized to grant to the applicant a license to keep the same for a term not less than one year nor more than ten years, on the applicant paying into the county treasury of the proper county, a sum to be fixed by the board of county commissioners, not less than two dollars nor more than five hundred dollars annually; and on the applicant producing the county treasurer's receipt for the sum so fixed he or she shall receive from the clerk of the said board of county commissioners, a license under the seal of said clerk, for which he or she shall pay the clerk the sum of fifty cents.

**SEC. 4. [Exclusive rights.]**—The person owning or possessing land on both sides of any stream, where a ferry is proposed to be established, shall have exclusive right to a license for a ferry at such place, and when the opposite banks are owned by different persons the right to a ferry shall be mutual; but if the owner does not apply to the board of commissioners, the board shall grant a license to any person applying for the same, except where either of the landings are not on a public highway, in which case the consent of the owner of the ground shall first be had in writing; *Provided*, That nothing herein contained shall be so construed as to prevent any person from ferrying persons across a small stream in high water; and the board of county commissioners are hereby authorized to direct the county clerk to give any person a permit for that purpose, when in their opinion the stream is too small to justify the expense of a license; *Provided, also*, When any person shall apply for a renewal of his license, at the same place where he kept a ferry the preceding year, the same may be granted or renewed without notice or petition.

**SEC. 5. [Renewal of license.]**—When a license shall expire in vacation, and the person who obtained the same shall procure a renewal, the latter license shall include the time from the expiration of the former, as well as the time to which it shall extend in future, and the applicant shall pay a rateable proportion for the whole time therein mentioned, and shall thereupon be exonerated from any penalty to which he would be otherwise liable; *Provided, however*, That in all applications for license, the board of commissioners may grant or refuse the same at their discretion.

**SEC. 6. [Boats—Penalties.]**—Every person obtaining a license to keep a ferry, shall provide and keep in good repair a good and sufficient boat, for the safe conveyance of persons and property, and when the river or creek over which the ferry is kept is passable, shall, with a sufficient number of hands to work and manage the boat, give due attendance from daylight in the morning until dark in the evening; and shall, moreover, at any hour in the night or day that the creek or river can be passed, when called upon for that purpose, convey the United States mail or other public express across said ferry; and if any person having obtained a license as aforesaid, shall fail or neglect to perform the duties herein enjoined, or any of them, the person so offending shall forfeit and pay for every such offense, a sum not exceeding five dollars, to be recovered before any justice of the peace of the proper county, at the suit of any person prosecuting for and making due proof of such failure or neglect; and if any keeper of a ferry as aforesaid, shall demand or receive a higher rate or sum for ferriages than shall be

allowed by the board of county commissioners of the county wherein such ferry is kept, the person so offending shall forfeit and pay for every such offense, a fine not exceeding ten dollars, recoverable before any justice of the peace of the proper county, by any person making due proof thereof, to be disposed of as hereinafter provided.

SEC. 7. [**Release from penalties.**].—Should the county commissioners refuse to renew the license of a ferryman, he shall be exonerated from the penalties of this chapter, by paying into the county treasury, previous to any prosecution having been commenced against him, such sum for the time which may have elapsed between the expiration of his license and the next session of the board of county commissioners, as shall bear a rateable proportion to the amount charged for the previous year.

SEC. 8. [**Rates of ferriage.**].—The board of county commissioners, at the same time they grant a license to keep a ferry shall also fix the rate of ferriages which the ferry keeper may demand and receive for the transportation of persons and property; and it shall be the duty of the clerk of the board of said county commissioners to furnish every person taking out a license to keep a ferry, with a list of the rate of ferriages, which list the ferry keeper shall post at the door of his ferry-house or in some conspicuous place convenient to said ferry.

SEC. 9. [**List to be handed grand jury.**].—Every county clerk shall, on the first day of the term of the district court, deliver to the grand jury an accurate list of all persons holding license within his county; and it shall be the duty of the judge to give this chapter in charge to the grand jury, whose duty it shall be to make inquiry and give information of any violation thereof, except in cases where jurisdiction is given to justices of the peace.

SEC. 10. [**Unauthorized ferries.**].—If any person shall keep a ferry without being duly authorized, the person so offending shall forfeit and pay a sum not exceeding fifty dollars, to be recovered by indictment.

SEC. 11. [**Neglect of officers.**].—If any justice of the peace or other officer shall neglect or fail to comply with the requisitions of this chapter, the person so offending shall forfeit and pay for every such offense a sum not exceeding fifty dollars, at the discretion of any court of competent jurisdiction before whom the same may be recovered, for the use of the county.

SEC. 12. [**Suits how brought.**].—All actions or suits brought under the provisions of this chapter, shall be in the name of the state of Nebraska, and the court taking cognizance thereof shall keep a record of all fines and forfeitures recovered under the same; and sheriffs, constables and other officers shall pay all moneys, within thirty days after receiving the same, into the county treasury. Justices of the peace and clerks of courts, before whom any fine is recovered, shall present an accurate account thereof to the county clerk, on or before the first Monday of July annually; and it shall be the duty of the county clerk to inform against and prosecute all offenders against this statute, especially such offenses as are cognizable before justices of the peace.

SEC. 13. [**Vested rights.**].—Nothing herein contained shall be so construed as to conflict or interfere with any vested right heretofore acquired or secured under any law of this state.

SEC. 14. [**Foot passengers.**].—It shall be unlawful for any person or persons, ferry or transfer company, engaged in ferrying or transferring persons across any river in this state, or any river forming the boundary line thereof, to charge, demand of, or receive from any footman, or foot passengers, more than ten cents for any such ferriage or transfer across any of said rivers. [1871, § 1, 128.]

SEC. 15. [**Penalty.**].—If any person or persons or company engaged in the business aforesaid, shall demand, charge, or receive a greater sum than ten cents for such transfer, such person or persons or company, shall incur a penalty of ten

SECS. 14-15. "An act to limit the amount of ferriage to be charged for ferrying footmen." Laws 1871, 123. Took effect April 1, 1871.

dollars for such offense, which penalty may be collected by civil action before a justice of the peace whenever service of process can be made; one half of the said penalty shall be for the use of the plaintiff in any such action, and the other half shall be paid to the county treasurer, and constitute a part of the school fund of such county. [Id. § 2.]

#### CHAPTER 80.—FIRE COMPANIES.

**SECTION 1. [Exemption from jury duty.]**—All members in good standing in any fire company, or hook and ladder company in this state, and all persons who have been members of such company in good standing for five consecutive years, in the state of Nebraska, shall be exempt from serving upon grand and petit juries, of justice of the peace courts of this state, and from militia duty in time of peace, and from the assessment of any poll-tax. [1867, 12 Sess. Ter., 16. Amended 1878. G. S. 890.]

**SEC. 2. [Number of members.]**—No fire company shall have upon its rolls at one time, more than seventy-five persons, and no hook and ladder company shall have upon its rolls at any one time more than fifty members; and the foreman and secretary of every such company shall, on the first days of April and October in each year, file in the office of the clerk of the district court, in and for the respective counties, a certified copy of the rolls of their respective companies, so as to obtain for the members thereof the privilege of the exemption herein named; *Provided*, That no organization shall be deemed to be a *bona fide* fire, or hook and ladder company, until it shall have procured for active service, apparatus for the extinguishment or prevention of fires, in case of a fire company, to the value of \$1,500, and of a hook and ladder company to the value of \$500.

**SEC. 3. [Dues.]**—Members in good standing are hereby defined to be those who keep their dues promptly paid up, and are present and render active service when called out for the legitimate purposes of their organization.

**SEC. 4. [Exemption from execution.]**—That all fire-engines, hose, hose-carriages, ladders, buckets, and all vehicles, machinery and appliances of every kind, used or kept by incorporate cities, villages or fire companies, for the purpose of extinguishing fire, be, and the same is hereby exempt from execution and sale, to satisfy any debt, judgment or decree arising upon contract or otherwise; *Provided*, That the provisions of this act shall not affect any voluntary lien created by bill of sale, mortgage or otherwise, on such property, by the proper owner; *Provided, further*, That the provisions of this act shall not apply to, or in any way affect, the remedy upon any contract now existing, or judgment rendered upon any contract in any court of this state. [1869 § 1, 17.]

#### [CHAPTER 81.—FISH.\*]

**SECTION 1. [Fish commissioner—Appointment.]**—That the governor shall nominate, and by and with the advice and consent of the senate appoint three resident citizens of the state of Nebraska, who shall constitute a board of fish commissioners, who shall hold such office for the term of three years from the date of such appointment and until the appointment of their successors; *Provided*, That the persons first appointed under this act shall hold such office one, two, and three years respectively, whose respective terms of office shall be designated in such appointment, and thereafter the governor shall in like manner fill all vacancies in said board during the remainder of the term. [1879 § 1, 154.]

**SEC. 2. [Same—Government.]**—The board may adopt by-laws for its government not inconsistent with the laws of the state. The person whose unex-

SECS. 1-3. "An act to exempt firemen from jury, militia and road duty." 12 Sess. Ter., 1867, 16. Took effect Feb. 18, 1867.

SEC. 4. "An act to exempt from sale on execution, property used and kept to extinguish fires." Laws 1869, 17. Took effect Jan. 22, 1869.

\*NOTE.—"An act creating a board of fish commissioners for the propagation and distribution of fish in the public waters of Nebraska." Laws 1879, 154.

pired term of office is the shortest shall preside at the business meetings of the board. In the determination of all questions by the board two members must concur.

**SEC. 3. [Compensation—Expenses].**—The members of the board shall receive no compensation for services performed, but they shall be reimbursed actual and necessary expenses incurred in the discharge of the duties of the commission, not to exceed the sum of \$500 in any one year, out of money appropriated for that purpose.

**SEC. 4. [Powers—Duties].**—The board shall have the entire charge and supervision of all public waters pertaining to the collection, propagation, cultivation, distribution, and protection of fish in this state. It shall have control of all property of the state obtained or held for the purposes contemplated by this act. It shall receive all fish and fish spawn donated to the state by the United States fishery commission, or from other sources or persons, or purchased by the state. It may establish hatching boxes, etc., for the preservation and hatching of spawn and fry, and in the most practical and economical manner procure and distribute fish in the public waters of this state, and adopt such other means as shall, in its judgment, best promote the increase and preservation of food fishes.

**SEC. 5. [Same].**—The commissioners may take or cause to be taken, under the direction of the board, any fish at any time for the purpose of fish culture or for scientific observation. They shall give special attention to the enforcement of the laws of the state relative to the protection of fish and fisheries in the state.

**SEC. 6. [Report to governor].**—The board shall annually, on or before the first day of January in each year, report its transactions, with an account in detail of all its receipts and expenditures, to the governor, also of all spawn and fish taken or received and distributed, giving time, place, and sources from which received, and such other matters as appertain to the fishery interests of the state.

## CHAPTER 32.—FRAUDS.

### FRAUDULENT CONVEYANCES AND CONTRACTS RELATIVE TO REAL ESTATE.

**SECTION 1. [When void.]**—Every conveyance of or charge upon, any estate or interest in lands, or the rents and profits thereof, made or created with intent to defraud prior or subsequent purchasers for a valuable consideration, shall, as against such purchasers, be void.

**SEC. 2. [Subsequent purchaser.]**—No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser, who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantor in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

**SEC. 3. [Conveyance to be in writing.]**—No estate or interest in land, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, or surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same.

**SEC. 4. [Wills and trusts.]**—The preceding section shall not be construed

SECS. 1-25. What is known as the "Statute of Frauds," being secs. 60-84, chap. 43, R. S. 1866, 292-297. In the compilation of Gen. Stat. 1873, these sections were placed in a separate chapter entitled "Frauds," the numbering of the sections being changed. Inasmuch as nearly all of the decisions in reference to this statute refer to its present place in Gen. Stat. p. 391, the same arrangement has been followed in this edition.

SEC. 3. If under a lease for a term of years the lessee may terminate it at the end of either year, upon giving the lessor six days written notice, such notice must be served on him as required by the contract. Parol testimony is inadmissible to prove the surrender of leased premises. 7 Neb. 75. Payment of a small portion of purchase money is not such part performance as takes the contract out of the statute. 1 Neb. 53. Possession of vendee must be by acts clear, certain and definite. Id. Part performance by the vendor including delivery of possession, and full performance by the vendee, will take the case out of the statute. 10 Neb. 138. A parol agreement was made between father and son that the latter should have the use of lands of the former during his life in consideration that the son should support his father and mother during their lives. The son cultivated the land and raised crops which were seized on execution against the father. The son brought replevin. Held, that as between the parties to the suit, the agreement was not within the statute. 9 Neb. 384.



to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

SEC. 5. [**Lease.**—Every contract for the leasing, for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, be in writing, and signed by the party by whom the lease or sale is to be made.

SEC. 6. [**Specific performance.**—Nothing in this chapter contained shall be construed to abridge the powers of the court of chancery to compel the specific performance of agreements in cases of part performance.

#### FRAUDULENT CONVEYANCES AND CONTRACTS RELATIVE TO GOODS, CHATTELS AND THINGS IN ACTION.

SEC. 7. [**When void.**—All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

SEC. 8. [**Contract to be written.**—In the following cases every agreement shall be void, unless such agreement, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged therewith: *First.* Every agreement that, by its terms is not to be performed within one year from the making thereof. *Second.* Every special promise to answer for the debt, default or misdoings of another person. *Third.* Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry. *Fourth.* Every special promise by an executor or administrator to answer damages out of his own estate.

SEC. 9. [**Same.**—Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or more, shall be void, unless—*First.* A note or memorandum of such contract be made in writing, and be subscribed by the party to be charged thereby; or, *Second.* Unless the buyer shall accept and receive part of such goods or the evidences, or some of them, of such things in action; or, *Third.* Unless the buyer shall, at the time, pay some part of the purchase money.

SEC. 10. [**Public auction.**—Whenever goods shall be sold at public auction, and the auctioneer shall, at the time of sale, enter in a sale book, a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale within the meaning of the last section.

SEC. 11. [**Sale void unless accompanied by delivery.**—Every sale made by a vendor of goods and chattels in his possession or under his control, and

SEC. 5. The contract if made by an agent, must be in the name of his principal; if the agent contract in his own name or describes himself as agent for the principal it is the contract of the agent and not of the principal. 3 Neb. 213.

SEC. 6. 1 Neb. 137, 251. 2 Id. 124, 375. 3 Id. 214, 462. 5 Id. 357, 559. 7 Id. 502. 8 Id. 369. 9 Id. 424. 10 Id. 234.

SEC. 7. A reservation in an assignment for a return of the surplus to the assignor if any remained after paying creditors, does not make it fraudulent. 7 Neb. 433. See chap. 6, ante p. 60.

SEC. 8. The servant of A was injured by the wrongful act of B. A physician was called in by B, who went to A's house, where the servant lay, and performed medical services, immediately after which A told him that B was responsible for the accident, adding: "But you need not be at all alarmed, I will see that you are paid," and the physician continued treating the patient until he was cured. *Held,* That the promise of A was void under the statute. 10 Neb. 364.

SEC. 9. The object of this section is not to avoid sales satisfactory to the parties, but merely to enable them in case of litigation to properly protect themselves by insisting upon certain specified modes of proof in order to enforce them. 9 Neb. 180. The defense given by this section is personal and cannot be interposed by strangers to the agreement. 10 Neb. 417.

SEC. 11. Creditors and subsequent purchasers in good faith can alone assail a chattel mortgage under which the mortgagor retains possession. And a purchaser must establish his own *bona fides*. If at the time of the purchase he knew of the existence of the mortgage, he takes the property subject to the claims of the mortgagee. 2 Neb. 251. A mortgage of a stock of goods with possession and power of sale in the mortgagor is void as to creditors and subsequent bona fide purchasers. 3 Neb. 75. 6 Neb. 219, 397. But it is valid between the parties, and a vendee who purchases with the intent to hinder and delay creditors cannot hold the goods against the mortgagee, although it was not recorded until after the pretended purchase. 8 Neb. 377. A provision that the mortgagor may retain the possession and have the use of the property, is not a power to sell and does not invalidate the mortgage. 6 Neb. 219, 397. The retention of possession is only *prima facie* evidence of

every assignment of goods and chattels, by way of mortgage or security, or upon any condition whatever, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession, of the things sold, mortgaged or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith; and shall be conclusive evidence of fraud, unless it shall be made to appear on the part of the persons claiming under such sale or assignment, that the same was made in good faith, and without any intent to defraud such creditors or purchasers.

SEC. 12. [Creditors].—The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time whilst such goods and chattels shall remain in his possession, or under his control.

SEC. 13. [Exception].—Nothing contained in sections ten and eleven shall be construed to apply to contracts of bottomry or *respondentia*, nor to assignments or hypothecations of vessels or goods at sea, or in foreign ports, or upon the waters of a navigable stream, if the assignee or mortgagee shall take possession of such vessels or goods as soon as may be after the arrival thereof.

SEC. 14. [Chattel mortgage].—Every mortgage or conveyance intended to operate as a mortgage of goods and chattels hereafter made, which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditor of the mortgager, and as against subsequent purchasers and mortgagers in good faith, unless the mortgage, or a true copy thereof, shall be filed in the office of the county clerk of the county where the mortgager executing the same resides, or in case he is a non-resident of the state, then in the office of the clerk of the county where the property mortgaged may be at the time of executing such mortgage, and such clerk shall endorse on such instrument or copy the time of receiving the same, and shall keep the same in his office for the inspection of all persons; and such mortgage or instrument may be so filed, although not acknowledged, and shall be valid as if the same were fully spread at large upon the records of the county. [1879, 107.]

SEC. 15. [Index].—Such clerk shall also enter in a book to be provided by him for that purpose, the names of all the parties to such instruments, arranging the names of mortgagors alphabetically, and shall note thereon the time of filing such instrument or copy. Such mortgage when satisfied may be discharged by an entry by the mortgagee or his agent on the margin of such index, which shall be attested by the clerk without fee, and the original instrument or copy so filed shall be returned to the mortgager. [1879, 108.]

SEC. 16. [Ceases to be valid in five years].—Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagees in good faith, after the expiration of five years from the filing of the same copy thereof. Every such clerk shall be entitled to

fraud. 6 Neb. 333.—In a controversy between the mortgagee and creditors of the mortgagor concerning property in possession of the latter, evidence that the mortgage "was made in good faith and without intent to defraud such creditors" is required to overcome the presumption of fraud arising from such possession. 7 Neb. 138. In order to prevent such presumption in favor of creditors, and the necessity of proof by the mortgagee of good faith in the execution of the mortgage to overcome it, there must be an actual and continued change of possession. *Id.*—A continued possession of goods, assigned by an execution debtor, up to the time of their being seized in execution, in the absence of a showing of good faith in him who claims under the assignment, is conclusive evidence that such assignment was fraudulent. 7 Neb. 433. And the same rule applies in case of a sale. 9 Neb. 50. The law will not protect a purchaser, even if he pay a valuable consideration, if the sale is made for the purpose of putting the property beyond the reach of creditors. *Id.*—To render a conveyance, not fraudulent on its face, void as to creditors, the fraudulent purpose must be shared by both the grantor and grantee. 6 Neb. 400. And see 2 Neb. 186.

SEC. 14. "An act to amend sections 73, 74 and 75., of chapter 43, Revised Statutes 1866, entitled Real Estate." Laws 1879, 107. Took effect June 1, 1879. Placed here in accordance with explanation given in note to sec. 1, p. 286. A neglect to record the mortgage (the original section required a record) discharges a surety, if such neglect occasion a loss of the security. But it is not enough that the debtor has squandered the property, it must appear that such neglect enabled him to pass it to *bona fide* purchasers. 2 Neb. 271. Prior to the passage of this section the mortgage to be valid must have been acknowledged. 7 Neb. 235. As between the parties the mortgage need not be in writing; a verbal agreement to give and accept security is valid except as to creditors and *bona fide* purchasers. 8 Neb. 4.

receive the following fees for services under the provisions of this chapter: For filing such instrument or copy thereof, ten (10) cents; for entering the same in a book, ten (10) cents; and for certified copies of such instruments so filed as aforesaid for every one hundred words, ten (10) cents. [1879, 108.]

#### GENERAL PROVISIONS.

**SEC. 17. [Agreements to defraud.]**—Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods or things in action, or of any rents or profits issuing therefrom, and every charge upon lands goods or things in action or upon the rents and profits thereof, made with the intent to hinder, delay, or defraud creditors or persons of their lawful rights, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suit commenced, or decree or judgment suffered, with the like intent as against the person so hindered, delayed, or defrauded, shall be void.

**SEC. 18. [Grants or assignments.]**—Every grant or assignment of any existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the party making the same, shall be void.

**SEC. 19. [Void as to heirs, etc.]**—Every conveyance, charge, instrument, or proceeding declared to be void, by the provisions of this chapter, as against creditors or purchasers shall be equally void against the heirs, successors, personal representatives or assignees of such creditors or purchasers.

**SEC. 20. [Fraudulent intent.]**—The question of fraudulent intent in all cases arising under the provisions of this chapter, shall be deemed a question of fact, and not of law, and no conveyance or charge shall be adjudged fraudulent, as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

**SEC. 21. [Title of purchasers.]**—The provisions of this chapter shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

**SEC. 22. [Lands.]**—The term "lands," as used in this chapter, shall be construed as co-extensive in meaning with "lands, tenements, and hereditaments," and the terms "estate and interest in lands," shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in lands as above described.

**SEC. 23. [Conveyance.]**—The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing (except a last will and testament) whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

**SEC. 24. [Consideration.]**—The consideration of any contract or agreement, required by the provisions of this chapter to be in writing, need not be set forth in the contract or agreement, or in the note or memorandum thereof, but may be proved by any other legal evidence.

**SEC. 25. [Agents.]**—Every instrument required by any of the provisions of this chapter to be subscribed by any party, may be subscribed by his agent, thereunto authorized by writing.

SEC. 17. In stating a cause of action under this section it is necessary to allege that the assignment was made "with the intent" either to hinder, delay or defraud the plaintiff. 7 Neb. 434. When a vendee participates in the fraud of the vendor by accepting a conveyance with the intent to defraud creditors, the conveyance is void although full consideration was paid for the property; but a bona fide purchaser, for a valuable consideration, without notice, is protected whether purchasing from the fraudulent grantor or grantee. 6 Neb. 99. See 7 Neb. 24. Chap. 6 ante, p. 60.

SEC. 20. The question of intent in case of an alleged fraudulent conveyance by a husband to his wife is one of fact for submission to the jury. 4 Neb. 171; and see 6 Neb. 99. If the illegality of the instrument appear on its face it is the province of the court to pronounce it fraudulent as to creditors, but if it contain no unlawful provisions it can only be declared void by proof of fraud in fact which is a question for a jury to find. 6 Neb. 219, 400. If however certain facts are conceded to exist, the question of their sufficiency to indicate a fraudulent intent is one of law for the court to determine. Id.

SEC. 25. Cited 1 Neb. 52. 3 Neb. 213. See note to sec. 5, p. 287.

## FRAUDULENT TRANSFERS.

**SEC. 26. [Contracts, etc., to be in writing].**—That no sale, contract or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any purchaser or judgment creditor of the vendee or lessee in actual possession, obtained in pursuance of such sale, contract or lease without notice, unless the same be in writing, signed by the vendee or lessee, and a copy thereof filed in the office of the clerk of the county, within which such vendee or lessee resides; said copy shall have attached thereto an affidavit of such vendor or lessor, or his agent or attorney, which shall set forth the names of the vendor and vendee or lessor and lessee, or description of the property transferred and the full and true interest of the vendor or lessor therein. All such sales and transfers shall cease to be valid against purchasers in good faith or judgment or attaching creditors without notice at the expiration of five years, unless such vendor or lessor, shall, within thirty days, prior to the expiration of the five years from the date of such sale or transfer, file a copy thereof verified as aforesaid in the office of said clerk, and the said vendor or lessor may preserve the validity of his said sale or transfer of personal property by an annual refiling in the manner as aforesaid of such copy. [1879 § 1, 102.]

**SEC. 27. [Index].**—The county clerk, on presentation, shall file such copy in his office, and index the same in the same manner as chattel mortgages are required to be indexed, and he shall receive therefor a fee of twenty-five cents. This act shall not be held to apply to chattel mortgages. [Id. § 2.]

## CHAPTER 83.—GRASSHOPPERS.\*

**SECTION 1. [Destruction].**—That the supervisors of each road district in this state shall, at the time when the grasshoppers shall have been hatched out and before the same shall become full-fledged and able to fly, notify each able-bodied male resident of his district, between the ages of sixteen and sixty years, to perform two days labor, at such time and at such place, and in such manner, as shall by said supervisor be deemed most efficient in the destruction of the grasshopper. Said notices shall be given in the same manner as is provided by law, for the notice to work upon the public highways. [1877 § 1, 154.]

**SEC. 2. [In cities].**—Cities of the first and second class shall be governed by the provisions of this act; and it shall be the duty of the mayor of such cities, to appoint, not exceeding two supervisors for each ward, to oversee the labor to be performed under the provisions of this act.

**SEC. 3. [Additional labor].**—In case it shall appear that two days work is not sufficient to destroy the grasshoppers in any district or ward, and it shall further appear that more time can be profitably employed in the destruction of the grasshopper, the supervisors of such ward or road district may require from the persons liable to the provisions of this act, not exceeding ten days labor in addition to the time hereinbefore mentioned, and it shall be duty of such supervisor to give to each person who shall have performed labor under the provisions of this section, a receipt for the number of days labor performed, and the supervisor shall, upon oath, report to the city or county authorities the names and amount of labor performed by each person.

**SEC. 4. [Failure to work—Penalty].**—It shall be the duty of all persons subject to the provisions of this act, to attend when notified as herein provided, and labor under the direction of the supervisor of their respective district or ward. Any person who, after being notified, shall refuse, neglect, or fail to comply with the provisions of this act shall forfeit and pay to the county or city treas-

SECS. 26-7. "An act to amend an act entitled 'An act to prevent the fraudulent transfer of personal property' approved Feb. 19, 1877." Laws 1879, 102. Took effect June 1, 1879. Prior to this act it was held that a sale and delivery on condition that property is not to vest until the purchase money is paid does not pass title to the vendee until the condition is performed. 5 Neb. 180. The act does not apply to contracts entered into before it took effect. 9 Neb. 444.

\*NOTE.—"An act to provide for the destruction of grasshoppers." Laws 1877, 154. Took effect Feb. 19, 1877.

urer, as the case may be, the sum of ten dollars, together with costs of suit, which sum shall be collected by suit before any justice of the peace within the county, in an action to be brought in the name of the city or county.

SEC. 5. [**Report of supervisor.**].—The supervisor shall report, under oath, to the city or county authorities, the names of all persons who shall have refused or failed to comply with the provisions of this act.

#### CHAPTER 84.—GUARDIANS AND WARD

SECTION 1. [**Minors.**].—All male children under twenty-one, and all females under eighteen years of age, are declared to be minors; but in case a female marries between the age of sixteen and eighteen, her minority ends. [R. S. 178. G. S. 396.]

SEC. 2. [**Guardians.**].—The court of probate in each county, when it shall appear to him necessary or convenient, may appoint guardians to minors and others, being inhabitants or residents in the same county, and also to such as shall reside without the state, and have an estate within the same.

SEC. 3. [**Appointment.**].—If the minor is under the age of fourteen years, the court of probate may appoint his guardian, and if he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the court, shall be appointed accordingly.

SEC. 4. [**Same.**].—If the guardian nominated by such minor shall not be approved by the court, or if the minor shall reside out of the state, or if, after being cited by the court, he shall neglect to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

SEC. 5. [**Same.**].—When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the court, his nomination of a guardian may be certified to the court of probate, by a justice of the peace, which shall have the same effect as if made in the presence of the court.

SEC. 6. [**Parents.**].—The father of the minor, if living, and in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the custody of the person of the minor, and to care for his education.

SEC. 7. [**When minor is an orphan.**].—If the minor have no father or mother living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

SEC. 8. [**Duty of guardian.**].—Every guardian, appointed as aforesaid, shall have the care and management of the estate of the minor, and shall continue in office until such minor shall arrive at the age of twenty-one, if a male, or eighteen years if a female, or until the guardian shall be discharged according to law.

SEC. 9. [**Bond.**].—Every such guardian shall give bond, with surety or sureties, to the judge of probate, in such sum as the court shall order, with condition as follows: *First.* To make a true inventory of all the real and personal estate of the ward that shall come to his possession or knowledge, and to return the same into the court at such time as the law directs. *Second.* To dispose of and manage all such estate and effects according to law, and for the best interests of the ward, and faithfully to discharge his trust as such guardian. *Third.* To render an account on oath of the property in his hands, including the proceeds of all the real estate which may be sold by him, and of the management and disposition of such property within one year after his appointment, and at such other times as the court shall direct. *Fourth.* At the expiration of his trust, to settle his accounts with the court, or with the ward, or his legal representatives, and to pay over and deliver, all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

**SEC. 10. [Expenses of minor.]**—If any minor, who has a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than such father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable, and shall be directed by the court, and the charges therefor may be allowed accordingly in the settlement of the accounts of such guardian.

**SEC. 11. [Appointment of guardian by will.]**—Every father may, by his last will, in writing, appoint a guardian for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for any less time, and every such testamentary guardian shall have the same powers and shall perform the same duties with regard to the person and estate of the ward as a guardian appointed by the court.

**SEC. 12. [Bond.]**—Every such testamentary guardian shall give bond in like manner and with like condition as is hereinbefore required of a guardian appointed by the court; *Provided*, That when the testator, in the will appointing the guardian, shall have ordered or requested that such bond shall not be given, the bond shall not be required, unless, from a change in the situation or circumstances of the guardian, or for other sufficient cause, the court shall think proper to require it.

**SEC. 13. [Appointment by courts.]**—Nothing contained in this chapter shall impair or affect the power of any court to appoint guardians to defend the interests of minors, impleaded in such court, or interested in any matter then pending, nor their power to appoint or allow any person, as next friend for a minor, to commence, prosecute or defend any suit in his behalf.

**SEC. 14. [Guardian of insane person.]**—When the relations or friends of any insane person, or of any person who, by reason of extreme old age, or other cause, is mentally incompetent to have the charge and management of his property, shall apply to the court of probate to have a guardian appointed for him, the court shall cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the cause, not less than fourteen days before the time so appointed.

**SEC. 15. [Same.]**—If, after a full hearing and examination, upon any such application, it shall appear to the court that the person in question is incapable of taking care of himself and managing his property, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

**SEC. 16. [Same.]**—Every guardian so appointed, as provided in the preceding section, shall have the care and custody of the person of his ward, and the management of all his estate, until such guardian shall be legally discharged, and he shall give bond to the judge of probate, in like manner and with the like condition as is before prescribed with respect to the guardian of the minor.

**SEC. 17. [Guardian of spendthrift.]**—When any person, by excessive drinking, or by gaming, idleness, or debauchery of any kind, shall so spend, waste or lessen his estate as to expose himself or family to danger of want or suffering, or the county to charge or expense for the support of himself or family, any officer having charge of the poor of the county, or justice of the peace of the county of which such spendthrift is an inhabitant, or in which he resides, may present a complaint to the court of probate, setting forth the facts and circumstances in the case, and praying to have a guardian appointed for him.

**SEC. 18. [Same.]**—The court shall cause notice to be given to such supposed spendthrift of the time and place of hearing the case, not less than ten days before the time so appointed, and if, after a full hearing, it shall appear to the court that the person complained of comes within the provision contained in the preceding section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

**SEC. 19. [Contracts of spendthrift.]**—After the order for notice has been

issued, the complainant may cause a copy of the complaint, with the order for such notice, to be filed in the office of the county clerk of the county, and a minute thereof be entered on the lien book in said office; and if a guardian shall be appointed on such application, all contracts, except for necessities at reasonable prices, and all gifts, sales, and transfers of real or personal estate, made by such spendthrift, after the filing of a copy of such complaint and order, as aforesaid, and before the termination of the guardianship, shall be utterly void.

**SEC. 20. [Allowance to ward.]**—When a guardian shall be appointed for an insane person, or a spendthrift, the court shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward, in defending himself against the complaint.

**SEC. 21. [Duties of guardians.]**—Every guardian appointed for a spendthrift, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged, and he shall give bond to the judge of probate, in like manner and with like condition as is hereinbefore directed with respect to the guardian of an insane person.

**SEC. 22. [Payment of debts.]**—Every guardian appointed under the provisions of this chapter, whether for a minor or for any other person, shall pay all just debts due from the ward out of his personal estate, and the income of his real estate, if sufficient; or if not, then out of his real estate, upon obtaining license for the sale thereof, and disposing of the same in the manner provided by law.

**SEC. 23. [Settlement of accounts, etc.]**—Every such guardian shall also settle all accounts of the ward, and demand, sue for, and receive all debts due him, or may, with the approbation of the court, compound for the same, and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects, and he shall appear for and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.

**SEC. 24. [Management of estates.]**—Every guardian shall manage the estate of his ward frugally and without waste, and apply the income and profit thereof, as far as may be necessary for the comfortable and suitable maintenance and support of the ward and his family, if there be any, and if such income and profits shall be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor, as provided by law, and shall apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward, and his family, if there be any.

**SEC. 25. [Partition.]**—The guardian may join in, and assent to a partition of the real estate of the ward, in the cases and in the manner provided by law, and he may also assign and set out dower in the said estate, to any widow entitled thereto.

**SEC. 26. [Oath—Inventory of estate.]**—Every guardian appointed by virtue of this chapter, shall, before entering upon his duties, take and subscribe an oath or affirmation before the probate judge that he will faithfully perform the duties of guardian to such ward, according to law and the best of his ability. Every such guardian shall, within three months after his appointment, make out and return under oath, into the probate court from which he received his appointment, a true and perfect inventory of all the property of his ward in this state which shall come to his knowledge or possession, and shall, within that time, cause the same to be appraised, in like manner as is required with respect to the estate of a deceased person; and every guardian shall, except as otherwise provided in this chapter, account for and dispose of the estate of his ward in like manner as is directed with respect to executors and administrators, as near as may be; and similar proceedings may be had to obtain such account or punish such guardian for contempt in not rendering the same. [Amended 1873, G. S. 400.]

**SEC. 27. [Sale of wards property.]**—The courts of probate in their respective counties, on the application of a guardian, or of any person interested

in the estate of any ward, after such notice to all persons interested therein as the court shall direct, may authorize or require the guardian to sell and transfer any stock in public funds, or in any bank or corporation, or any other personal estate or effects held by him as guardian, and to invest the proceeds of such sale, and also any other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein, and the said court may make such further orders, and give such directions as the case may require, for managing, investing, and disposing of the estate and effects in the hands of the guardian.

**SEC. 28. [Removal of guardian.]**—When any guardian, appointed either by the testator or court of probate, shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the court, after notice to such guardian and all others interested, may remove him; and every guardian may, upon his request, be allowed to resign his trust, when it shall appear to the court proper to allow the same; and upon every such resignation or removal, and upon the death of any guardian, the court may appoint another in his place.

**SEC. 29. [Penalty for neglect.]**—If any guardian, having the care and custody of such minor, shall neglect to well feed and clothe him or her, or in any way maltreat or abuse him or her, he shall, upon conviction thereof, be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding sixty days, or both, at the discretion of the court.

**SEC. 30. [Proceedings against guardian.]**—Proceedings may be commenced by any one against such person who shall have such minor in charge, by filing an information under oath with the probate judge in the county where the guardian was appointed; and such judge shall, if any of the particulars mentioned in the preceding section appear to be proved by such information, issue his warrant requiring such guardian forthwith to be arrested and brought before him to answer such charge. [Amended 1873, G. S. 401.]

**SEC. 31. [Same.]**—Before being brought before the judge, upon such warrant, the party arrested shall have a reasonable opportunity of making a defense, and the plea of "not guilty" made by him, or entered by the court in case he refuse to plead, shall be the only plea necessary. If, upon the testimony adduced, it appears to the probate judge that the guardian is unfit for the trust, and that the condition of such minor would be ameliorated by the removal of such guardian, the judge shall remove him and appoint another in his place. [Id.]

**SEC. 32. [Limitation of action.]**—No action shall be maintained against the sureties in any bond given by the guardian, unless it be commenced within four years from the time when the guardian shall have been discharged; *Provided*, That if at the time of such discharge the person entitled to bring such action shall be out of the state, or under any legal disability to sue, the action may be commenced at any time within five years after the return of such person to the state, or before such disability shall be removed.

**SEC. 33. [Embezzlement.]**—Upon complaint made to the court by any guardian or by the ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any person, as having concealed, embezzled or conveyed away any of the money, goods, or effects, or any instrument in writing belonging to the ward, the court may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

**SEC. 34. [Non-resident minor.]**—When any minor, or other person liable to be put under guardianship according to the provisions of this chapter, shall reside without this state, and shall have any real estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the court of probate of any county in which there may be any estate of such absent person; and after notice given to all persons interested, in such manner as the court shall order, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.



**SEC. 35. [Same.]**—Every guardian appointed according to the provisions of the preceding section, shall have the same powers, and perform the same duties, with respect to any estate of the ward that shall be found within this state, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed by virtue of this chapter.

**SEC. 36. [Bond.]**—Every such guardian shall give bond to the judge of probate, in like manner, and with like condition as is hereinbefore prescribed with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and effects as shall come to his hands in this state.

**SEC. 37. [Priority of appointment.]**—The guardianship which shall be first lawfully granted to any person residing without the state, shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the probate court in every other county.

**SEC. 38. [Compensation of guardian.]**—Every guardian shall be allowed the amount of his reasonable expenses, incurred in the execution of his trust, and shall also have such compensation for his services as the court in which his accounts are settled, shall deem to be just and reasonable.

**SEC. 39. [Joint guardians.]**—When an account is rendered by two or more joint guardians, the court may in its discretion allow the same, upon the oath of any one of them.

**SEC. 40. [Spendthrift.]**—The word "spendthrift" in all its provisions relating to guardians and wards, contained in this or in any other statute, is intended to include every person who is liable to be put under guardianship, on account of excessive drinking, gaming, idleness, or debauchery.

#### CHAPTER 35.—HOME FOR THE FRIENDLESS.\*

**SECTION 1. [Establishment.]**—That a home for the friendless shall be established in the state of Nebraska. [1881 § 1, chap. 52.]

**SEC. 2. [Location.]**—The location of said home shall be under the supervision of the board of public lands and buildings, and shall be located at the city or town which shall, after duly advertising for bids for its location, donate the largest amount to said home.

**SEC. 3. [Appropriation.]**—The sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of the general fund of the treasury for the erection of said home.

**SEC. 4. [Government.]**—The government of said home shall be by and under the supervision of the society of home for the friendless; *Provided*, That nothing herein contained shall be so construed as to prevent the board of public lands and buildings from establishing rules and regulations for the government of such home in any manner.

#### CHAPTER 36.—HOMESTEADS.†

**SECTION 1. [Exemption.]**—A homestead not exceeding in value \$2,000, consisting of the dwelling house in which the claimant resides, and its appurtenances and the land on which the same is situated, not exceeding 160 acres of land, to be selected by the owner thereof, and not in any incorporated city or vil-

\*NOTE.—"An act to establish a home for the friendless in the state of Nebraska, and to provide for the erection and location and government of the same." Approved Feb. 28. Took effect June 1, 1881. Laws 1881, 247.

†NOTE.—"An act to provide for the selection, and disposition of homesteads, and to exempt the same from judgment liens, and from attachment, levy, or sale, upon execution or other process." Laws 1879, 57. Took effect Sept. 1, 1879. NOTE, Also, that the provisions of "An act making homesteads subject to execution or order of sale, in cases where the same are mortgaged as security for the payment of money," [G S 403] are superseded by sec. 3 of above act. Decisions relative to homesteads prior to this act. 3 Neb. 178 4 Id. 496, 499. 5 Id. 48. 10 Neb. 8. Homesteads on government lands. 2 Neb. 1:2. 3 Id. 461. 5 Id. 264, 267. 6 Id. 366. 7 Id. 185, 422. 10 Id. 324, 602.

lage or instead thereof at the option of the claimant, a quantity of contiguous land not exceeding two lots within any incorporated city or village, shall be exempt from judgment liens and from execution or forced sale, except as in this chapter provided. [1879, 57.]

**SEC. 2. [From what property selected.]**—If the claimant be married the homestead may be selected from the separate property of the husband, or with the consent of the wife from her separate property. When the claimant is not married but is the head of a family, within the meaning of section fifteen, the homestead may be selected from any of his or her property.

**SEC. 3. [Subject to execution, when.]**—The homestead is subject to execution or forced sale in satisfaction of judgments obtained: *First*, On debts secured by mechanics', laborers', or vendors' liens upon the premises. *Second*, On debts secured by mortgages upon the premises, executed and acknowledged by both husband and wife, or an unmarried claimant.

**SEC. 4. [How conveyed.]**—The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

**SEC. 5. [How selected.]**—When an execution, for the enforcement of a judgment obtained in a case not within the classes enumerated in section 3, is levied upon the lands or tenements of a head of a family, such head of a family may notify the officer at the time of making the levy of what he regards as his homestead, with a description thereof, within the limits above prescribed, and the remainder alone shall be subject to such levy, except as otherwise provided in this chapter. The judgment creditor may thereupon apply to the district court in the county in which the homestead is situated, for the appointment of persons to appraise the value thereof.

**SEC. 6. [Application for appraisal.]**—The application must be made upon a verified petition showing: 1. The fact that an execution has been levied upon property which has been claimed as a homestead. 2. The name of the claimant. 3. That the value of the homestead exceeds the amount of the homestead exemption.

**SEC. 7. [Petition.]**—The petition must be filed with the clerk of the district court and a copy thereof, with notice of the time and place of hearing, be served upon the claimant at least ten days before the hearing.

**SEC. 8. [Appraisement.]**—At the hearing, the court, upon proof of the service of such petition and notice, and of the facts stated in the petition, shall appoint three disinterested residents of the county to appraise the value of the homestead, who must take an oath to impartially appraise the same. They must view the premises, and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

**SEC. 9. [Report.]**—Within ten days, or less, if the court so order, from the time of their appointment, they must make to the court a report in writing, showing the appraised value, and their determination upon the matter of a division of the land claimed.

**SEC. 10. [Homestead set off.]**—If from the report it appears that the land claimed can be divided without material injury, the court shall, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, not exceeding the quantity prescribed in section one of this chapter, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

**SEC. 11. [Sale.]**—If from the report it appears to the court that the land claimed exceeds in value the amount of the homestead exemption, and that it cannot be divided, he must make an order directing its sale under the execution; but at such sale no bid must be received unless it exceeds the amount of the homestead exemption.

**SEC. 12. [Proceeds of sale.]**—If the sale is made, the proceeds thereof, to

the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

**SEC. 13. [Exemption of surplus.]**—The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the claimant, which the law gives to the homestead.

**SEC. 14. [Fees of appraisers.]**—The appraisers shall receive the same fees as jurors, in civil cases in the district court, which, with all other costs of these proceedings, must be paid by the execution creditor, in the first instance, but in the cases provided for in sections ten and eleven, the amount paid must be added as costs on execution, and collected accordingly.

**SEC. 15. [Head of a family.]**—The phrase "head of a family," as used in this chapter, includes within its meaning: *First.* The husband when the claimant is a married person. *Second.* Every person who has residing on the premises with him or her, and under his care and maintenance, either: 1. His or her minor child, or the minor child of his or her deceased wife or husband. 2. A minor brother or sister, or the minor child of a deceased brother or sister. 3. A father, mother, grandfather or grandmother. 4. The father, or mother, grandfather or grandmother of a deceased husband or wife. 5. An unmarried sister, or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves.

**SEC. 16. [Money realized from sale of homestead is exempt.]**—If the homestead be conveyed by the claimant, or sold for the satisfaction of any lien mentioned in section three, the proceeds of the sale, beyond the amount necessary to the satisfaction of such lien, and not exceeding the amount of the homestead exemption, shall be entitled for the period of six months thereafter to the same protection against legal process and the voluntary disposition of the claimant which the law gives to the homestead. And the sale and disposition of one homestead shall not be held to prevent the selection or purchase of another as provided in this chapter.

**SEC. 17. [Homestead succession.]**—If the homestead was selected from the separate property of either husband or wife, it vests, on the death of the person from whose property it was selected, in the survivor for life, and afterwards in his or her heirs forever, subject to the power of the decedent to dispose of the same, except the life estate of the survivor, by will. In either case it is not subject to the payment of any debt or liability contracted by or existing against the husband and wife or either of them, previous to or at the time of the death of such husband or wife, except such as exists or has been created under the provisions of this chapter.

**SEC. 18. [Repealed Laws 1875, 45; Laws 1877, 33; and all acts in conflict with this act.]**

**SEC. 19. [Provided for act to take effect Sept. 1, 1879.]**

## CHAPTER 37.—ILLEGITIMATE CHILDREN.

**SECTION 1. [Proceedings before justice of the peace.]**—That on complaint made to any justice of the peace in this state by any unmarried woman resident therein, who shall hereafter be delivered of a bastard child, or being pregnant with a child which, if born alive may be a bastard, accusing on oath or affirmation any person of being the father of said child, the justice shall take such accusation in writing, and thereupon issue his warrant, directed to the sheriff, coroner, or constable of any county of this state, commanding him forthwith to bring such accused person before said justice, to answer to said complaint; and on return of such warrant the justice, in the presence of the

NOTE.—"An act for the maintenance and support of illegitimate children." Laws 1875, 53, sec. 9 of which repealed Chap. 28. G. S. 404. This act took effect Feb. 25, 1875.

SEC. 1. Proceedings should be conducted in the name of the prosecuting witness or, if she refuse, in the name of the county. But where commenced in the name of the state, without objection on that ground until after judgment, objections are waived. 9 Neb. 127.

accused person, shall examine the complainant under oath, respecting the cause of her complaint, and such accused person shall be allowed to ask the complainant, when under oath, any question he may think necessary for his justification; all of which questions and answers, together with every other part of the examination, shall be reduced to writing by the justice of the peace, and if, on such examination, the party accused shall pay or secure to be paid to the complainant, such sum or sums of money or property as she may agree to receive in full satisfaction, and shall further give bonds to the county commissioners of the county in which said complainant shall reside, and their successors in office, conditioned to save such county, free from all charges toward the maintenance of said child, then and in that case the justice shall discharge the party accused out of custody, or [on] his paying the costs of prosecution; *Provided*, That the agreement aforesaid shall be made or acknowledged by both parties in the presence of the justice, who shall thereupon enter a memorandum of the same upon his docket. [1875, 53.]

SEC. 2. [Suit by commissioners.]—That, when any woman has a bastard child, and neglects to bring a suit for its maintenance, or commences a suit and fails to prosecute to final judgment, the county commissioners in any county interested in the support of any such bastard child, where sufficient security is not offered to save the county from expense, may bring a suit, in behalf of the county, against him who is accused of begetting such child, or may take up and prosecute a suit begun by the mother of the child.

SEC. 3. [Recognizance.]—That in case such accused person does not comply with the provisions in the first section of this act contained, the justice to whom such complaint was made shall bind such persons in a recognizance to appear at the next term of the district court, with sufficient security, in a sum not less than five hundred dollars, nor more than two thousand dollars, for the benefit of the county in which such bastard child shall be born, to answer such accusation, and to abide the order of the court thereon, and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer such complaint.

SEC. 4. [Renewal of recognizance.]—That if at the time of such court, the woman be not delivered, or be unable to attend, the court shall order the renewal of the bonds of recognizance, that the accused person shall be forthcoming at the next court after the birth of the child, at which the mother of said child shall be able to attend; and the continuance of such bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose.

SEC. 5. [Trial—Evidence.]—That when such accused person shall plead not guilty to such charge before the court to which he is recognized, the court shall order the issue to be tried by a jury; and at the trial of such issue the examination before the justice shall be given in evidence, and the mother of the bastard child shall be admitted as a competent witness and her credibility be left to the jury; *Provided*, always, that no woman shall be admitted as a witness as aforesaid, who has been convicted of any crime which would by law disqualify her from being a witness in any other case; and on the trial of the issue the jury shall, in behalf of the man accused, take into consideration any want of credibility in the mother of the bastard child; also, any variations in her testimony before the justice and that before the jury; and also, any other confession of her, at any time, which does not agree with her testimony, on any other pleas or proofs made and produced on behalf of such accused person.

SEC. 6. [Proceedings if defendant found guilty.]—That in case the jury find the defendant guilty, or such accused person before the trial shall con-

SEC. 5. Where an *alibi* was established by testimony of two credible witnesses in addition to that of the accused, as against the unsupported testimony of the mother, *held* the verdict should be set aside as being against the evidence. 6 Neb. 307.

SEC. 6. On a verdict of guilty the court should adjudge the accused to be the reputed father of the child, and a failure to do so will render the orders of the court for the support of the child erroneous. 6 Neb. 309.

fess in court that the accusation is true, he shall be judged the reputed father of said child, and shall stand charged with the maintenance thereof in such a sum or sums as the court may order and direct, with payments of costs of prosecution, and the court shall require the reputed father to give security to perform the aforesaid order, and in case the said reputed father shall neglect or refuse to give security as aforesaid, and pay the costs of prosecution, he shall be committed to the jail of the county, to remain till he shall comply with the order of the court.

**SEC. 7. [Bail].**—When any defendant to a complaint of bastardy shall have been committed to jail on neglect or refusal to find the security required by the third section of this act, or on failure of such defendant to renew his recognizance as required by the fourth section of this act, it shall be lawful for any judge of the district court, or probate judge within his county, to admit such defendant to bail by recognizing him in such sum and with such securities as such judge shall deem proper, conditioned for the appearance of such defendant before the proper court to answer the complaint made, under which he stands charged; and for taking such bail the said judge may by his special warrant, under his hand, require the sheriff or jailer to bring such defendant before him at the court house of the proper county, at such time as in such warrant the judge may direct; *Provided*, that in fixing the amount of bail, the judge admitting the same, shall be governed in the amount and quality of bail required by the third section of this act.

**SEC. 8. [Warrant for arrest of accused.]**—The warrant authorized to be issued by this act, against any accused person, shall authorize and empower the officer to which it is directed, to pursue and take the accused person in any county in this state, and to bring said accused person before the justice who issued said warrant, to answer the complaint made against him.

**SEC. 9. [Repealed act of 1873, G. S. 404.]**

#### CHAPTER 38.—IMPROVEMENTS ON PUBLIC LANDS.\*

**SECTION 1. [Sale of improvements.]**—All contracts, promises, assumpsits, or undertakings, either written or verbal, which shall be made hereafter in good faith, and without fraud, collusion, or circumvention, for sale, purchase or payment of improvements made on the lands owned by the government of the United States, shall be deemed valid in law or equity, and may be sued for and recovered as in other contracts. [R. S. 186. G. S. 409.]

**SEC. 2. [Deeds.]**—All deeds of quit-claim, or other conveyance, of all improvements upon public lands, shall be as binding and effectual in law and equity between the parties, for conveying of the title of the grantor in and to the same, as in cases where the grantor has the fee simple to the premises.

#### CHAPTER 39. - INNKEEPERS.†

**SECTION 1. [Notice—Valuables.]**—That hereafter every landlord or keeper of a public inn or hotel in this state, who shall constantly have in his inn or hotel an iron safe in good order, and suitable for the safe custody of money, jewelry, or other valuable articles belonging to his guests or customers, shall keep posted conspicuously at the office and in other public rooms or halls of his inn or hotel, notices to his guests or customers, that they must leave their money, jewelry and other valuables with the landlord, his agent or clerk, for the safe keeping, that he may make safe deposits of the same in the place provided for that purpose. [1875 § 1, 157.]

**SEC. 2. [Same—Loss—Liability of landlord.]**—That such landlord, hotel or innkeeper as shall comply with the requirements of the first section of

\*NOTE.—Chap. XXIX, R. S. 186. Chap. 30, G. S. 409.

SEC. 1. The sale and surrender of a homestead claim on public lands together with improvements thereon, is a good consideration for a promissory note. 7 Neb. 422.

SEC. 2. See 2 Neb. 111.

†NOTE.—"An act concerning innholders or hotel keepers and their guests." Laws 1875, 157. Took effect Feb. 19, 1875.

this act, shall not be liable for any money, jewelry, or other valuables of gold or silver, or rare or precious stones, that may be lost, if the same is not delivered to said landlord, hotel or innkeeper, his agent or clerk, for deposit, unless such loss shall occur by the hand, or through the negligence of the landlord, or by a clerk or servant employed by him in such hotel or inn; *Provided*, That nothing herein contained shall apply to such amount of money and valuables as is usual, common and prudent for any such guest to retain in his room or about his person.

**SEC. 3. [Defrauding landlord—Penalty].**—Any person who shall put up at any hotel or inn and shall procure any food, entertainment, or accommodation, without paying therefor, except where credit is given by express agreement, with intent to cheat or defraud the owner or keeper thereof out of the pay for the same; or who with intent to cheat or defraud such owner, or keeper out of the pay therefor, shall obtain credit at any hotel or inn for such food, entertainment, or accommodation, by means of any false show of baggage or effects brought thereto; or who shall with such intent remove, or cause to be removed, any baggage or effects from any hotel or inn, while there is a lien existing thereon for the proper charges due from him for fare and board furnished therein, shall be punished by imprisonment not exceeding three months, or by a fine not exceeding one hundred dollars.

#### CHAPTER 40.—INSANE.

**SECTION 1. [Location].**—That the hospital for the insane located at Lincoln, in the county of Lancaster, shall be known under the name and by the title of the "Nebraska Hospital for the Insane," and shall be under the charge of three trustees, two of whom shall constitute a quorum for the transaction of business. [G. S. 411.]

**SEC. 2-4. [Obsolete.]**

**SEC. 5. [Government].**—The trustees shall have the general control and management of the hospital; they shall have full power to make all by-laws necessary for the government of the same, not inconsistent with the constitution and laws of this state, and to conduct the affairs of the institution in accordance with the laws and by-laws regulating the same. It shall be the duty of the majority of said board to visit the hospital quarterly, and at said quarterly visits they shall, with the superintendent, examine the accounts of the steward, and certify their approval or otherwise on the page of his monthly balance.

**SEC. 6. [Officers].**—The board of trustees shall appoint, upon the nomination of the superintendent, a steward and matron, who, together with the superintendent and assistant physician, shall be styled the resident officers of the hospital, and shall reside in the same, and be governed and subject to all the laws and by-laws established for the government of the hospital.

**SEC. 7. [Property in trust].**—The board of trustees may take and hold in trust, for the hospital, any lands conveyed or devised, and any money or other personal property given or bequeathed, to be applied for any purpose connected with the institution.

**SEC. 8. [Record of proceedings].**—The board of trustees shall make a record of their proceedings at all meetings, in a book to be provided for that purpose, and at their annual meeting shall make a report to the governor, of the condition and wants of the hospital, which shall be accompanied by a full and accurate report of the superintendent, and a detailed account of all moneys received and disbursed by the steward.

**SEC. 9. [Contracts].**—No trustee or any officer of the institution shall hereafter be directly or indirectly interested in the purchase of building material, or any article of furniture or supply, for the use of the hospital.

**SEC. 10. [Governor shall appoint superintendent].**—The governor

NOTE.—"An act for the government of the hospital for the insane, defining the legal relations of insane persons, and providing for their care and protection." G. S. 411. Took effect Mar. 3, 1873. Government now vested in board of public lands and buildings. Const. sec. 19, Art. V, and Art. VII. Chap. 83.

of the state shall appoint a superintendent and may appoint an assistant physician of the hospital for the insane, who shall hold their offices for the term of six years, unless sooner removed as hereinafter provided.

**Sec. 11. [Duties and powers of superintendent.]**—The superintendent of said institution shall be a physician of acknowledged skill and ability in his profession, and be a graduate of a regular medical college. He shall be the chief executive officer of the hospital, and shall hold his office for the term of six years, unless sooner removed by the governor for malfeasance in office, or other good and sufficient cause. He or the assistant physician must be in daily attendance at the hospital, and in no instance must both be absent at the same time. Before entering upon the duties of his office, he shall take and subscribe an oath or affirmation for the faithful and diligent discharge of the duties required by law. He shall have the entire control of the medical, moral, and dietetic treatment of the patients, and shall see that the several officers of the institution faithfully and diligently discharge their respective duties. He shall employ attendants, nurses, servants and such other persons as he may deem necessary for the efficient and economical administration of the government of the hospital. [Amended 1875, 86.]

**Sec. 12. [Seal of hospital.]**—The superintendent shall provide an official seal for the hospital, upon which shall be the words, "Nebraska Hospital for the Insane." He shall make reports to the board of trustees as provided for in section eight (8) of this act.

**Sec. 13. [Duties of assistant physician.]**—The assistant physician shall be a medical man of such character and qualifications as to be able to perform the ordinary duties of the superintendent during his necessary absence or inability to act; he shall also perform all the duties of hospital steward.

**Sec. 14. [Steward.]**—The steward, under the direction of the superintendent, and not otherwise, shall make all purchases for the hospital where they can be made on the best terms, keep the accounts, make engagements with, pay and discharge those employed in and about the hospital, and have a personal superintendence of the farm, garden, and grounds, and perform such other duties as may be assigned him.

**Sec. 15. [Repealed by 1881, 102.]**

**Sec. 16. [Matron.]**—The matron, under the direction of the superintendent, and not otherwise, shall have the general supervision of the domestic arrangements of the hospital, and do what she can to promote the comfort and restoration of the patients.

**Sec. 17. [Commissioners of insanity.]**—In each organized county of the state, there shall be a board of commissioners, consisting of three (3) persons, to be styled, commissioners of insanity, two (2) of whom shall constitute a quorum; the clerk of the district court shall be *ex-officio* member of such board, and clerk of the same; the other members shall be appointed by the judge of said court; one of them shall be a respectable practicing physician, and the other a respectable practicing lawyer, and the appointments shall be made of persons residing as convenient as may be to the county seat, such appointments may be made during the session of the court, or in vacation; and, if made in vacation, it shall be by written order, signed by the judge and recorded by the clerk of the court. Immediately on the taking effect of this act, the judge shall make the first appointment; he shall then appoint one for one year, and the other for two years; as their respective terms expire, their successors shall be appointed for two (2) years; the appointment of successors may be made at any time within three (3) months prior to the expiration of the term of the incumbent, who shall hold his office until his successor is appointed and qualified. In the temporary absence, or inability to act, of two (2) of the commissioners, the judge of the district court, if present, may act in the room of one of such commissioners; or the commissioner present may call to his aid a respectable practicing physician or lawyer, who after qualifying as in other cases, may act in the same capacity. The record in such case must show the fact of such absence.

**SEC. 18. [Oath—Meeting.]**—Before entering upon the duties of their office, the persons so appointed shall take and subscribe an oath or affirmation to support the constitution of the United States, and of the state of Nebraska, and to faithfully discharge their duties according to law as such commissioners; which obligation shall be filed with the clerk of said court, who shall enter a memorandum thereof on the records; they shall organize by choosing one of their number president, they shall hold their meetings for business at the office of the clerk of said court, unless, for good reasons, they shall fix on some other place; if they deem necessary or advisable they may hold sessions at such regular times as they may fix; they shall also meet on notice from the clerk.

**SEC. 19. [Duties of clerk.]**—The term "clerk" as herein used, means clerk of said board of commissioners, unless otherwise expressed; the said clerk shall sign and give, or issue, all notices, appointments, warrants, subpoena, or other process required to be given or issued by the commissioners, affixing thereto his seal as clerk of said court; he shall file and carefully preserve in his office all papers connected with any inquest by the commissioners, and properly belonging to his office, with all notices, reports, and other communications; he shall keep separate books in which to minute the proceedings of the board, and his entries therein shall be sufficiently full to show, with the papers filed, a complete record of their findings, orders and transactions; the notices, reports, and communications herein required to be given or made, may be sent by mail, unless otherwise expressed or implied; and the fact and date of such sending, and of their reception, must be noted on the proper record.

**SEC. 20. [Power of commissioners.]**—The said commissioners shall have cognizance of all applications for admission to the hospital, or for the safe keeping otherwise of insane persons within their respective counties, excepting in cases otherwise specially provided for. For the purpose of discharging the duties required of them, they shall have power to issue subpoena, and compel obedience thereto, to administer oaths, and do any act of a court necessary and proper in the premises.

**SEC. 21. [Application for admission to hospital.]**—Applications for admissions to the hospital must be made in writing in the nature of an information, verified by affidavit; such information must allege that the person in whose behalf the application is made, is believed by the informant to be insane and a fit subject for custody and treatment in the hospital; that such person is found in the county and has a legal settlement therein, if such is known to be the fact; and if such settlement is not in the county, where it is, if known; or where it is believed to be, if the informant is advised on the subject.

**SEC. 22. [Investigation by commissioners.]**—On the filing of an information as above provided, the commissioners shall at once take steps to investigate the grounds of the information; for this purpose, they may require that the person for whom such admission is sought, be brought before them and that the examination be had in his or her presence; and they may issue their warrant therefor, and provide for the suitable custody of such person until their investigation shall be concluded; such warrant may be executed by the sheriff or any constable in the county, or if they shall be of opinion from such preliminary inquiry as they may make, and in making which they shall take the testimony of the informant if they deem necessary or desirable, and of other witnesses if offered, that such course would probably be injurious to such person or attended with no advantage they may dispense with such presence. In their examinations they shall hear testimony for and against such application, if any is offered; any citizen of the county, or any relative of the person alleged to be insane may appear and resist the application, and the parties may appear by counsel if they elect. The commissioners, whether they decide to dispense with the presence before them of such person or not, shall appoint some regular practicing physician of the county, to visit or see such person, and make a personal examination touching the truth of the allegation in the information, and touching the actual condition



of such person and forthwith report to them thereon; such physician may or may not be of their own number, and the physician so appointed and acting shall certify under his own hand, that he has in pursuance of his appointment, made a careful personal examination as required; and that on such examination, he finds the person in question insane, if such is the fact; and if otherwise, not insane; and in connection with his examination, the said physician shall endeavor to obtain from the relatives of the person in question, or from others who know the facts, correct answers so far as may be to the interrogatories hereinafter required to be propounded in such cases, which interrogations and answers shall be attached to his certificate.

**SEC. 23. [Further proceedings by commissioners.]**—On the return of the physician's certificate the commissioners shall as soon as practicable, conclude their investigations; and having done so, they shall find whether the person alleged to be insane, is insane; whether, if insane, a fit subject for treatment and custody in the hospital; whether the legal settlement of such person is in their county, and if not in their county, where it is, if ascertained; if they find such person is not insane, they shall order his or her discharge, if in custody; if they find such person insane, and a fit subject for custody and treatment in the hospital, they shall forthwith issue their warrant and a duplicate thereof, stating such finding with the settlement of the person, if found; and if not found, their information, if any, in regard thereto; authorizing the superintendent of the hospital to receive and keep such person as a patient therein; said warrant and duplicate with the finding and certificate of the physician, shall be delivered to the sheriff of the county who shall execute the same, by conveying such person to the hospital and delivering him or her, with such duplicate and physician's certificate and finding, to the superintendent thereof; the superintendent over his official signature, shall acknowledge such delivery on the original warrant, which the sheriff shall return to the clerk of the commissioners, with his cost and expense endorsed thereon; if neither the sheriff or his deputy is at hand or both are otherwise engaged, the commissioners may appoint some other suitable person to execute the warrant in his stead, who shall take and subscribe an oath or affirmation faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff; the sheriff or any other person so appointed, may take to his aid such assistance as he may need to execute such warrant; but no female person shall thus be taken to the hospital without the attendance of some other female, or some relative of such person. The superintendent in his acknowledgment of delivery, must state whether there was any such person in attendance, and give the name or names, if any. It is however hereby provided, that if any relative or immediate friend of the patient, who is a suitable person, shall so request, he shall have the privilege of taking and executing such warrant, in preference to the sheriff or any other person, and without taking such oath or affirmation; and for so doing he shall be entitled to his necessary expenses but to no fees. The requirements of this and preceding section, are modified by the provisions of the next section.

**SEC. 24. [Legal settlement of insane person.]**—If the commissioners find that the person so committed to the hospital has, or probably has, a legal settlement in some other county in the state, they shall immediately notify the commissioners of such county of such finding and commitment; and the commissioners so notified shall thereupon inquire and ascertain, if possible, whether the person in question has a legal settlement in their county, and shall immediately notify the superintendent of the hospital and the commissioners of the county from which such person was committed, of the result of such inquiry. If the legal settlement of a person so committed cannot for a time be ascertained, and is afterwards found, the notices so required shall then be given.

**SEC. 25. [Same.]**—When the superintendent of the hospital has been duly notified as herein required, that a patient sent to the hospital from one county, has a legal settlement in another county of the state, he shall thereafter hold and

treat such patient as from the latter county; and such holding shall apply to expenses already incurred in behalf of such patient and remaining unadjusted.

**Sec. 26. [Expenses incurred by one county to be refunded.]**—Expenses incurred as herein provided, by one county, on account of an insane person whose legal settlement is in another county of the state, shall be refunded with lawful interest thereon, by the county of such settlement; and shall be presented to the county commissioners of the county sought to be charged, which shall be allowed and paid the same as other claims.

**Sec. 27. [Patients having no legal settlement.]**—Patients in the hospital having no legal settlement in the state, or whose legal settlement cannot be ascertained, shall be supported at the expense of the state; this provision shall apply to all such patients now in the hospital, touching expenses already incurred and remaining unpaid, if any such there be, and the trustees may authorize the superintendent to remove any such patient at the expense of the state, if they see proper.

**Sec. 28. [Patients to be on an equal footing.]**—All patients in the hospital shall be regarded as standing on an equal footing; and the several patients, according to their different conditions of mind and body, and their respective needs, shall be provided for, and treated with equal care; *Provided*, That, if the relatives or immediate friends of any patient shall desire it, and shall pay the expenses thereof, such patient may have special care, and may be provided with a special attendant, as may be agreed upon with the superintendent; in such cases the charges for such special care and attendance shall be paid quarterly in advance.

**Sec. 29. [Relatives may pay expenses.]**—The relatives or friends of any patient in the hospital shall have the privilege of paying any portion or all of the expenses of such patient therein and the superintendent shall cause the account of such patient to be credited with any sums so paid.

**Sec. 30. [Patients, how cared for when the hospital is full.]**—If, in the case of any persons found to be insane, and fit subjects for custody and treatment in the hospital, as above provided, it shall be shown to the satisfaction of the commissioners, that they cannot at once be admitted therein for want of room, or for any other cause, and that they cannot with safety be allowed to go at liberty, the commissioners shall require that such patients shall be suitably provided for otherwise, until such admission can be had, or until the occasion therefor no longer exists; such patients may be cared for either as public or as private patients; those shall be treated as private patients whose relations or friends will obligate themselves to take care of and provide for them, without public charge. In the case of any one treated as a private patient, the commissioners shall appoint some suitable person as special custodian, who shall have authority, and whose duty it shall be, in all suitable ways, to restrain, protect, and care for such patient, in such manner as to best secure his or her safety and comfort, and in such manner as to best protect the persons and property of others. In the case of public patients, the commissioners shall require that they be in like manner restrained, protected, and cared for by the commissioners of the county or overseers of the poor, at the expense of the county, and they may accordingly issue their warrants to such commissioners of the county or overseers of the poor, who shall forthwith comply with the same. If there is no poor house for the reception of such patients, or if no more suitable place can be found, they may be confined in the jail of the county in charge of the sheriff.

**Sec. 31. [Care of, when not admitted to hospital.]**—On application to the commissioners on behalf of persons alleged to be insane, and whose admission to the hospital is not sought, made substantially in the manner above prescribed, and asking that provision be made for their care as insane, either public or private, within the county, and on proof of their insanity and need of care as above pointed out, the commissioners may provide for their care, protection, and restraint, as in the case of other applications.

**Sec. 32. [Commissioners to care for.]**—On information laid before the commissioners of any county that a certain insane person in the county is suffering for want of proper care, they shall forthwith inquire into the matter, and if they find the information well founded, they shall make all needful provisions for the care of such person as provided in other cases.

**Sec. 33. [No restraint except as herein provided for.]**—No person supposed to be insane shall be restrained of his or her liberty by any other person, otherwise than in pursuance of authority obtained as herein required, excepting to such extent, and for such brief period as may be necessary for the safety of persons and property, until such authority can be obtained.

**Sec. 34. [Cruelty to insane.]**—Any person having care of an insane person, and restraining such person either with or without authority, who shall treat such person with wanton severity, harshness, or cruelty, or shall in any way abuse such person shall be guilty of a misdemeanor, besides being liable in an action for damages.

**Sec. 35. [Transfer of county insane to hospital.]**—Insane persons who have been under care, either as public or private patients, outside of the hospital, by authority of the commissioners of any county, may on application to that effect be transferred to the hospital, whenever they can be admitted thereto, on the warrant of such commissioners; such admission may be had without another inquest, at any time within six months after the inquest already had, unless the commissioners shall deem further inquest advisable.

**Sec. 36. [Interrogatories to be given on application for admission.]**—In each case of application for admission to the hospital, correct answers to the following interrogatories, so far as they can be obtained, shall accompany the physician's certificate; and if, on further examination, after the answers are stated, any of them are found to be erroneous, the commissioners shall cause them to be corrected. *First.* What is the patient's name? Married or single? If any children how many? Age of youngest child? Age of patient? *Second.* Where was the patient born? *Third.* Where is his (or her) place of residence? *Fourth.* What has been the patient's occupation? *Fifth.* Is this the first attack? If not, when did others occur, and what was their duration? *Sixth.* When were the first symptoms of this attack manifested, and in what way? *Seventh.* Does the disease appear to be increasing, decreasing or stationary? *Eighth.* Is the disease variable, and are there rational intervals? If so, do they occur at regular periods? *Ninth.* On what subjects or in what way is derangement now manifested? State fully. *Tenth.* Has the patient shown any disposition to injure others? *Eleventh.* Has suicide ever been attempted? If so, in what way? Is the propensity now active? *Twelfth.* Is there a disposition to filthy habits, destruction of clothing, breaking glass, etc.? *Thirteenth.* What relatives, including grandparents and cousins, have been insane? *Fourteenth.* Did the patient manifest any peculiarities of temper, habits, disposition, or pursuits, before the accession of the disease? Any predominant passion, religious impressions, etc.? *Fifteenth.* Has the patient been subject to any bodily disease—epilepsy, suppressed eruptions, discharge of sores, or ever had any injury of the head? *Sixteenth.* Was the patient ever addicted to intemperance in any form? *Seventeenth.* Has restraint or confinement been employed? If so, what kind, and how long? *Eighteenth.* What is supposed to be the cause of the disease? *Nineteenth.* What treatment has been pursued for the relief of the patient? Mention particulars and the effect. *Twentieth.* State any other matter supposed to have a bearing on the case.

**Sec. 37. [Discrimination if there be lack of room in hospital.]** If at any time it may become necessary, for want of room, or other cause, to discriminate in the general reception of patients into the hospital, a selection shall be made, as follows: *First.* Recent cases, *i. e.* cases of less than one year's duration. *Second.* Chronic cases, *i. e.* when the disease is of more than one year's duration, presenting the most favorable prospects of recovery, shall be next pre-

ferred. *Thira.* Those for whom applications have been longer on file, other things being equal, shall be next preferred; and *Fourth.* When cases are equally meritorious, in all other respects, the indigent shall have the preference.

**SEC. 38. [Proceedings upon allegations that person confined in hospital is not insane.]**—On a statement in writing verified by affidavit, addressed to a judge of the district court of the county in which the hospital is situated, or of the county in which any certain person confined in the hospital has his or her legal settlement, alleging that such person is not insane, and is unjustly deprived of his or her liberty, such judge shall appoint a commission of not more than three persons, in his discretion to inquire into the merits of the case; one of which shall be a physician and if two or more appointed, one shall be a lawyer. Without first summoning the party to meet them they shall proceed to the hospital and have a personal interview with such person, so managed as to prevent him or her if possible, from suspecting its object, and they shall make any inquiries and examinations they may deem necessary and proper of the officers, and records of the hospital touching the merits of the case; if they shall judge it prudent and advisable they may disclose to the party, the object of their visit and either in the presence of such party, or otherwise, make further investigation of the matter; they shall forthwith report, to the judge making the appointment, the result of their examination and inquiries; such report shall be accompanied by a statement of the case and signed by the superintendent; if on such report and statement, and the hearing of the testimony, if any is offered, the judge shall find the person not insane, he shall order his or her discharge; if on the contrary, he shall so state, and authorize his or her continued detention. The finding and order of the judge with the report and other papers shall be filed in the office of the clerk of the court over which such judge presides, who shall enter a memorandum thereof on his record, and forthwith notify the superintendent of the hospital of the finding and order of the judge, and the superintendent shall carry out the order. The commissioners appointed as provided in this section, shall be entitled to their necessary expenses and a reasonable compensation to be allowed by the judge, and paid by the state out of any funds not otherwise appropriated; *Provided*, That the applicant shall pay the same, if the judge shall find that the application was made without probable grounds and shall so order.

**SEC. 39. [Same.]**—The commission so provided for shall not be repeated oftener than once in six months, in regard to the same party; nor shall such commission be appointed in the case of any patient within six months of the time of his or her admission.

**SEC. 40. [Habeas corpus.]**—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be decided at the hearing; and, if the judge shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person has been restored to reason.

**SEC. 41. [Escape of patient.]**—If any patient shall escape from the hospital, the superintendent shall cause immediate search to be made for such patient; and if the patient cannot soon be found, he shall cause notice of such escape to be forthwith given to the commissioners of insanity of the county where the patient belongs, and if such patient is found in their county, the commissioners shall cause him or her to be returned, and shall issue their warrant therefor, as in other cases, unless the patient shall be discharged, or unless, for good reasons, they shall provide for his or her care otherwise, of which they shall notify the superintendent.

**SEC. 42. [Discharge of patient.]**—Any patient who is cured, shall be immediately discharged by the superintendent. Upon such discharge the superintendent shall furnish the patient, unless otherwise supplied, with suitable clothing, and a sum of money not exceeding twenty (20) dollars, which shall be charged with the other expenses in the hospital, of such patient. The relatives of any patient not susceptible of cure by medical treatment in the hospital, and not dan-

gerous to be at large, shall have the right to take charge of and move such patient on the consent of the board of trustees; *Provided*, That in the interim of the meetings of the board, the consent of two of the trustees shall be sufficient.

**SEC. 43. [Discharge on application of relatives.]**—On the application of the relations or immediate friends of any patient in the hospital who is not cured, and who cannot be safely allowed to go at liberty, the commissioners of insanity of the county where such patient belongs, on making provision for the care of such patient within the county, as in other cases may authorize his or her discharge therefrom; *Provided*, no patient who may be under charge or conviction of homicide shall be discharged without the order of the board of trustees.

**SEC. 44. [Discharge of harmless patients.]**—The board of trustees shall order the discharge or removal from the hospital of incurable and harmless patients whenever it is necessary to make room for recent cases; *Provided*, That in the interim between the meetings of the board, the superintendent, in conjunction with two trustees, shall possess and exercise the power granted in this section.

**SEC. 45. [Notice to commissioners.]**—When patients are discharged from the hospital by the authorities thereof, without application therefor, notice of the order of discharge shall at once be sent to the commissioners of insanity of the county where they belong, and the commissioners shall forthwith cause them to be removed, and shall at once provide for their care in the county as in other cases, unless such patients are discharged as cured.

**SEC. 46. [Board of patients.]**—The board of trustees shall from time to time, fix the sum to be paid per week for the board and care of patients, and to arrive at such sum shall estimate the total outlay as far as possible from the sums actually paid per annum; and the weekly sum so fixed shall be the sum said hospital shall be entitled to demand for the keeping of any patient, and the certificate of the superintendent attested by the seal of the hospital, shall be evidence in all places, of the amount due as fixed.

**SEC. 47. [Superintendent shall certify to auditor amounts due from counties.]**—The superintendent shall certify to the auditor of state on the first days of March, June, September, and December, the amount (not previously certified by him), due to said hospital, from the several counties having patients chargeable thereto, and said auditor shall pass the same to the credit of the hospital. The auditor shall thereupon notify the county clerk of each county so owing, of the amount thereof, and charge the same to said county; and the board of county commissioners shall add such amount to the next state tax to be levied in said county, and pay the amount so levied into the state treasury.

**SEC. 48. [Estates and relatives not released from liability to pay expenses.]**—The provisions herein made for the support of the insane at public charge, shall not be construed to release the estates of such persons nor their relatives from liability for their support, and the commissioners of the several counties are authorized and empowered to collect from the property of such patients, or from any person or persons legally bound for their support, any sums paid by the county in their behalf, as herein provided; and the certificate from the superintendent and the notice from the auditor of state, stating the sums charged in such cases, shall be presumptive evidence of the correctness of the sum so stated. If the board of county commissioners, in the case of any insane patient who has been supported at the expense of the county, shall deem it a hardship to compel the relatives of such patient to bear the burden of his or her support, they may relieve such relatives from any part or all of such burden, as may seem to them reasonable and just.

**SEC. 49. [Discharge of insane by commissioners.]**—Whenever it shall be shown to the satisfaction of the commissioners of insanity of any county, that cause no longer exists for the care, within the county, of any particular person as an insane patient in their county, as herein provided, they shall order the immediate discharge of such person.

**SEC. 50. [Pay of commissioners and officers.]**—The commissioners of

insanity shall be allowed at the rate of three (3) dollars per diem each, for all the time actually employed in the duties of their office; they shall also be allowed their necessary and actual expenses, not including charges for board. The clerk, in addition to what he is entitled to as commissioner of insanity, shall be allowed one-half as much more for making the required record entries in all cases of inquest, and of meetings of the board for any purpose, and for the filing of any papers required to be filed; he shall also be allowed twenty-five (25) cents for each notice or process given or issued under seal as herein required. The examining physician shall be entitled to five dollars for each case examined, and mileage at the rate of ten cents per mile each way. The sheriff shall be allowed for his personal service in conveying a patient to the hospital and returning therefrom, at the rate of three dollars per day for the time necessary and actually employed, and mileage the same as is allowed in other cases, and for other service the same fees as for like services in other cases. Witnesses shall be entitled to the same fees as witnesses in the district court. The compensation and expenses provided for above shall be allowed and paid out of the county treasury in the usual manner. Whenever the commissioners of insanity issue their warrant for the admission of a person to the hospital, and funds to pay the expenses thereof are needed in advance, they shall estimate the probable expense of conveying such person to the hospital, including the necessary assistance, and not including the compensation allowed the sheriff; and on such estimate, certified by the clerk of commissioners of insanity, the county clerk shall issue his order on the treasurer of the county in favor of the sheriff or other person entrusted with the execution of such warrant; the sheriff or other person executing such warrant shall accompany his return with a statement of the expenses incurred; and the excess or deficiency may be deducted from or added to his compensation as the case may be; if funds are not so advanced, such expenses shall be certified and paid in the manner above prescribed, on the return of the warrant. When the commissioners of insanity order the return of a patient, compensation and expenses shall be in like manner allowed.

**SEC. 51. [Penalty for neglect of duty.]**—Any officer required as herein to perform any act, as herein provided, and any person accepting an appointment under the provisions of this act, and wilfully refusing or neglecting to perform his duty as herein prescribed, shall be guilty of a misdemeanor, besides being liable to an action for damages.

**SEC. 52. [Warrant of commissioners.]**—The warrant of the commissioners of insanity, authorizing the admission of any person to the hospital as a patient, accompanied by a physician's certificate as herein provided, shall operate to shield the superintendent and other officers of the hospital against all liability to prosecution of any kind, on account of the reception and detention of such person in the hospital; *Provided*, Such detention shall be otherwise, in accordance with the laws and by-laws regulating its management.

**SEC. 53. [Seal to be affixed.]**—The superintendent shall affix the seal of the hospital to any notice, order of discharge, report or other paper required to be given by him, or issued.

**SEC. 54. [Who are meant by "insane."]**—The term "insane" as used in this act includes every species of insanity or mental derangement. The term "idiot" is restricted to persons supposed to be naturally without mind; no idiot shall hereafter be admitted into the hospital for the insane; and all such idiots now in said hospital shall be discharged at the expiration of thirty days from the passage of this act, and it is hereby made the duty of the board of trustees to notify the commissioners of insanity of the county from which such idiots were sent, to remove said idiots from the hospital; and in case of neglect or refusal to comply with these provisions within thirty (30) days from the date of said notification, the superintendent shall cause said idiots to be returned to said counties at the expense of said county—which sum shall be collected in the same manner as provided for patients in section forty-seven of this act.

When such idiots are removed they shall be provided for in the same manner as other poor.

**SEC. 55. [Blanks.]**—The trustees of the hospital shall provide for furnishing the commissioners of insanity, of the counties entitled to send patients to the hospital, with such blanks for warrants, certificates, etc., as will enable them with regularity and facility to comply with the provisions of the law, and also with copies of the by-laws of the hospital when printed.

**SEC. 56. [Chaplain.]**—The board of trustees may, if they deem desirable, and upon nomination of the superintendent, appoint a chaplain and prescribe his duties.

**SEC. 57. [Insane from other states.]**—Insane persons may be admitted from other states and territories upon equal footing and on same conditions as private pay patients. The sum to be paid monthly for the care, maintenance and treatment of such patients to be fixed from time to time by the board of trustees, and to be collected quarterly in advance by the steward of the hospital and accounted for as other funds in his hands belonging to the state of Nebraska.

**SEC. 58. [Salary of superintendent and assistant.]**—The salary of the superintendent shall be twenty-five hundred dollars per annum and that of the assistant physician one thousand dollars per annum to be paid in the same manner as other state officers.

#### CHAPTER 41.—INSTRUMENTS NEGOTIABLE.

**SECTION 1. [Endorsements.]**—All bonds, promissory notes, bills of exchange, foreign and inland, drawn for any sum or sums of money certain, and made payable to any person or order, or to any person or assigns, shall be negotiable, by endorsement thereon, so as absolutely to transfer and vest the property thereof in each and every endorsee successively, but nothing in this section shall be construed to make negotiable any such bond, note, or bill of exchange, drawn payable to any person or persons alone, and not drawn payable to order, bearer or assigns; *Provided*, That all such bonds, promissory notes, and bills of exchange, made payable to bearer, shall be transferable by delivery without endorsement thereon. [R. S. 239. G. S. 426.]

**SEC. 2. [Action by endorsee.]**—Any endorsee to whom any such bond, note, or bill of exchange, made negotiable by the preceding section, is made payable by such endorsement or endorsements, may, in his own name, institute and maintain an action on such bond, note, or bill, for the recovery of the money due thereon, against the maker, drawer, or obligor, or against the endorsee, having first used due diligence to obtain the money of the drawer, maker, or obligor.

**SEC. 3. [Days of grace.]**—All notes, bonds, or bills, made negotiable by this chapter, shall be entitled to three days grace, in the time of payment, and the demand of payment, from the maker, on the third day of grace or of acceptance, if the instrument is a sight draft, and notice of non-payment or non-acceptance thereof to the endorser, within a reasonable time, shall be adjudged due diligence under the provisions of this chapter, unless the endorsement shall express, in writing, other conditions.

**SEC. 4. [Defense to suit by endorsee.]**—If any such bond, note, or bill of exchange shall be endorsed after the day on which it is made payable, and the endorsee shall institute an action thereon against the maker, drawer, or obligor,

NOTE.—Chap. XXVII, R. S. 239. Chap. 32, G. S. 426. DECISIONS.—Acceptance of draft. 8 Neb. 239. 9 Id. 298. Alteration of negotiable instruments. 5 Neb. 224, 439. 6 Id. 538. 9 Id. 4. 10 Id. 619. Duties of bank officers and rights and liabilities of banks. 1 Neb. 461. 4 Id. 194. 5 Id. 213, 539. 7 Id. 65, 204. 8 Id. 108, 171, 208. Conditions a part of the instrument. 8 Neb. 383. Consideration. 4 Neb. 519. 7 Id. 422. 9 Id. 3, 30, 36, 156, 223. 10 Neb. 207, 287. Conversion. 8 Id. 155. Days of grace. 9 Neb. 298. Defenses and evidence. 4 Neb. 179, 192, 335, 427, 431. 6 Id. 505. 7 Id. 128. 10 Id. 412, 457, 505. Estoppel. 8 Neb. 157. Extending time of payment. 5 Neb. 490. 7 Id. 77. Forged note. 9 Neb. 173. Guaranty. 9 Neb. 448. 10 Neb. 289, 292. Indorsement. 2 Neb. 29. 10 Id. 288, 291. Lex loci. 1 Neb. 111. 3 Id. 332. Liability of payee. 5 Neb. 210. Negotiability. 6 Neb. 381. 8 Id. 12, 24. 10 Id. 287. Notice and protest. 1 Neb. 416. 9 Id. 211. 10 Id. 341, 619. Note taken for pre-existing debt. 5 Neb. 437. Principal and agent. 8 Neb. 145. Principal and surety. 5 Neb. 490, 540. 6 Id. 451. 7 Id. 58, 145. Release. 1 Neb. 452. Set-off. 7 Neb. 82, 88. Signature falsely obtained. 5 Neb. 251.

the defendant shall be allowed to set up the same defense that he might have done had the same action been instituted in the name and for the use of the person to whom the said note, bond, or bill was originally made payable.

**SEC. 5. [Evidence of payment.]**—If any such bond, note, or bill of exchange shall be endorsed on or before the day on which the same is made payable, and the endorsee shall institute an action thereon the defendant may give in evidence at the trial any money actually paid on said bond, note, or bill of exchange, before the same was endorsed or assigned to the plaintiff, on proving that the plaintiff had notice of such payment before such endorsement was made and accepted.

**SEC. 6. [Action may be against drawers, makers, or endorsers jointly or severally.]**—It shall be lawful for any person or persons having a right to demand any sum of money upon any protested bond, note, or bill of exchange as aforesaid, to commence and prosecute an action for principal, damages, interest, and charges of protest against the drawers, makers, or endorsers, jointly or severally, or against either of them separately. And judgment shall, and may be given for such principal, damages, charges, and interest upon such principal, after the rate aforesaid, to the time of such judgement, together with costs of suit.

**SEC. 7. [Damages on protest.]**—When any bill of exchange shall be drawn for the payment of any such sum of money, and such bill shall be legally protested for non-acceptance or non-payment, the drawer or drawers, endorser or endorsers, shall be subject to the payment of twelve per centum damages thereon, if drawn upon any person or persons, or body corporate, without the jurisdiction of the United States, and six per centum damages thereon, if drawn upon any persons, or body corporate, within the jurisdiction of the United States, and without the jurisdiction of this state.

**SEC. 8. [Days to be observed as holidays.]**—That the following days to wit: the first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December and any day appointed or recommended by the governor of this state, or the president of the United States, as a day of fast or thanksgiving, and when any one of these days shall occur on Sunday, then the Monday following shall, for all purposes whatsoever as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks, or promissory notes, made after the passage of this act, be deemed public holidays, and be treated and considered as is the first day of the week commonly called Sunday; *Provided*, That when any one of these days shall occur on Monday, any bill of exchange, bank check, or promissory note, made after the passage of this act, which but for this act would fall due and be payable on such Monday, shall become due and payable on the day thereafter.

## CHAPTER 42.—INSTITUTION FOR THE BLIND.\*

**SECTION 1. [Establishment—Location.]**—That there shall be maintained at Nebraska City, in the county of Otoe, an institution for the blind, and there is hereby appropriated for that purpose the sum of ten thousand dollars, for the erection of a building and the furnishing of the same; *Provided*, That the citizens of Nebraska City shall raise the sum of three thousand dollars, and when the said sum of three thousand dollars is raised and paid over to the board of trustees, either in money or in property, to the satisfaction of such board, then the board of trustees of said institution for the blind shall proceed to locate said institution on not less than ten acres of land, and not to exceed one mile in distance from the court house in said Nebraska City. [1875 § 1, 149.]

SEC. 8. "An act to designate certain days to be observed as holidays in respect to bills of exchange, promissory notes, and bank checks." G. S. 427. Took effect Feb. 18, 1873.

\*NOTE.—An act to erect and maintain an institution for the blind." Laws 1875, 149. Took effect Feb. 19, 1875. The government of the institution being now vested in board of public lands and buildings, 6 Neb. 286, sections 2, 3, 5, 6, and 18 of original act are omitted. Sec. 10 was repealed 1881, 102



**SEC. 2. [Supervision—Powers of trustees.]**—The trustees shall have the general supervision of the institution, adopt rules for the government thereof, provide teachers, servants, and necessities for the institution, and perform all other acts necessary to render the institution efficient, and to carry out the purposes of the establishment. [Id. § 4.]

**SEC. 3. [Compensation of officers and employees.]**—The board of trustees shall fix the compensation of all the officers and employees of said institution at such a rate as shall, by them be deemed just and equitable; *Provided*, That in no event shall the total amount of expenses of the institution exceed the total amount of the appropriation for the same. [Id. § 7.]

**SEC. 4. [Assistants.]**—The assistant officers shall receive their appointment from the board, upon the nomination of the principal, for the faithful performance of their duties, and the principal shall be held responsible to the board for the performance of his duties. [Id. § 8.]

**SEC. 5. [Non-resident inmates.]**—Persons not resident of the state shall be entitled to the benefits of this institution on paying to the treasurer thereof the sum of fifty dollars quarterly in advance; *Provided*, That no such person shall be so received to the exclusion of any resident of this state. [Id. § 9.]

**SEC. 6. [Indebtedness—Limitation.]**—The board of trustees shall not create any indebtedness against the institution exceeding the amount appropriated by the legislature for the support thereof. [Id. § 11.]

**SEC. 7. [Appropriation—Ordinary expenses.]**—To meet the ordinary expenses of the institution, including furniture, books and maps, the compensation of principal, matrons, teachers, and employees, and to provide for contingencies, there is hereby appropriated the sum of two thousand dollars annually, or so much thereof as may be necessary, to be drawn quarterly, and then only as necessary to meet the wants of the institution. [Id. § 12.]

**SEC. 8. [Appropriation—Current expenses.]**—For the purpose of meeting current expenses, there is appropriated out of the state treasury or so much as necessary, not to exceed forty dollars per quarter to each pupil in said institution; *Provided*, That such amounts shall be drawn by warrants upon the temporary school fund of the state. [Id. § 13.]

**SEC. 9. [Report to governor.]**—The principal of said institution shall report to the governor on or before the fifteenth day of December preceding each regular session of the legislature, the number of pupils in attendance, with the name, age, sex, residence, place of nativity, and also the cause of blindness of each pupil. He shall also make a report of the studies pursued and trades taught in said institution, together with a complete statement of the expenditure, and also the number, kind, and value of articles manufactured and sold. [Id. § 14.]

**SEC. 10. [Clothing for pupils.]**—When the pupils of such institution are not otherwise supplied with clothing, they shall be furnished by the principal, who shall make out an account of the cost thereof in each case against the parent or guardian, if the pupil be a minor, and against the pupil, if he or she have no parent or guardian, or have attained the age of majority, which account shall be certified to be correct by said principal, and when so certified, such an account shall be presumed correct in all courts. The principal shall thereupon remit said accounts by mail to the treasurer of the county from which the pupil so supplied shall have come to said institution. Such treasurer shall proceed at once to collect the same by suit, in the name of his county, if necessary, and pay the same into the state treasury. The principal shall, at the same time, remit a duplicate of such account to the auditor of state, who shall credit the same to the account of the institution, and charge it to the proper county; *Provided*, If it shall appear by the affidavit of three disinterested citizens of the county, not of kin to the pupil, that the said pupil, or his or her parents, would be unreasonably oppressed by such suit, then such treasurer shall not commence said suit, but shall credit the same to the state on his books, and report the amount of such account to the board of county commissioners of his county, and the said board

shall levy sufficient tax to pay the same to the state, and to cause the same to be paid into the state treasury. [Id. § 15.]

**SEC. 11. [Appropriations, how drawn.]**—The above appropriations, including account of clothing furnished pupils, shall be drawn monthly in advance, upon orders of the president and treasurer of said board of trustees, made on the auditor of the state, which said order shall recite the amount of funds then in the hands of the treasurer of said board, and the amount necessary to defray the expenses of the ensuing month, and thereupon the auditor shall draw his warrant on the state treasurer in favor of the treasurer of said board for the amount so shown to be necessary for the said monthly expenses of said institution. [Id. § 16.]

**SEC. 12. [Who admitted—Report of county superintendent.]**—All blind persons resident of this state, of suitable age and capacity, shall be entitled to an education in this institution, at the expense of the state. Each county superintendent of common schools shall report to the principal of the institution for the blind, on the first day of April of each year, the name, age, residence, and post office address of every blind person, and every person blind to such an extent as to be unable to acquire an education in the common schools, and who reside in the county in which he is superintendent. [Id. § 17.]

#### CHAPTER 43.—INSURANCE COMPANIES.

**SECTION 1. [How formed.]**—That hereafter, when any number of persons associate themselves together for the purpose of forming an insurance company, for any other purpose than life insurance, under the provisions of chapter twenty-five of the Revision of 1866, and all acts amendatory and supplementary thereto, they shall publish a notice of such intention once in each week, for four weeks, in some public newspaper in the county in which such insurance company is proposed to be located; and they shall also make a certificate under their hand, specifying the name assumed by such company and by which it shall be known, the object for which said company shall be formed, the amount of its capital stock, and the place where the principal office of said company shall be located, which certificate shall be acknowledged before and certified by some notary public or clerk of court of record, and forwarded to the auditor of state, who shall submit the same to the attorney general of state for examination, and if it shall be found by the attorney general of state to be in accordance with the provisions of this act, and not in conflict with the constitution and laws of the United States and this state, he shall make certificate of the facts, and return it to the auditor of state, who shall reject the name or title applied for by any company when he shall deem the same too similar to any one already appropriated by any other company, or likely to mislead the public. [G. S. 429.]

**SEC. 2. [When organized.]**—When the said certificate of the said company shall have received the approval of the attorney of state and auditor of state, the said company shall cause the same to be recorded as now required by law for recording articles of incorporation; and said persons, when incorporated, and having in all respects complied with the provisions of this act, are hereby authorized to carry on the business of insurance, as named in such certificate of incorporation, and by the name and style provided therein, and shall be deemed a body corporate with succession, they and their associates, successors, and assigns, to have the same general corporate powers, and be subject to all the obligations and restrictions of said chapter twenty-five of the Revision of 1866, and of such as may be amendatory or supplementary, except as may be herein otherwise provided.

**SEC. 3. [Capital required.]**—No joint-stock company shall be incorporated under the provision of this act, with a smaller capital than one hundred thousand dollars, nor more than one million dollars, as may be specified in the

certificate of incorporation, which stock shall be divided into shares of one hundred dollars each, of which capital, at least fifty per cent. shall be fully paid up in cash, and that for the remainder of its capital there are in its possession notes of its stockholders, secured by at least one surety or by mortgages on unincumbered real estate, within this state, worth at least twice the amount of such notes, which notes or other security shall be approved by the state auditor; nor shall any company on the plan of mutual insurance commence business in this state until agreements have been entered into for insurance with at least two hundred applicants, the premiums upon which shall amount to not less than twenty-five thousand dollars, of which at least five thousand dollars shall have been paid in actual cash, and for the remainder of which notes of solvent parties, founded upon actual and *bona fide* applications for insurance, shall have been received; no one of the notes received as aforesaid shall amount to more than five hundred dollars, and no two thereof shall be given for the same risk or made by the same person or firm, except where the whole amount of such notes does not exceed the sum of five hundred dollars; nor shall any note be regarded or represented as capital stock, unless a policy be issued upon the same within thirty days after the organization of the company taking the same, upon a risk which shall be for no shorter period than twelve months; each of said notes shall be payable, in whole or in part, at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said company; and no notes shall be accepted as part of such capital stock, unless the same shall be accompanied by a certificate of a justice of the peace, notary public, or clerk of the district court of the county in which the person executing such note shall reside, that the person making the same is, in his opinion, pecuniarily good and responsible for the same, in property not exempt from execution by the laws of their state; and no such note shall be surrendered while the policy for which it was given continues in force.

**SEC. 4. [Subscription books.]**—Having published the notice and filed the publisher's affidavit of the publication thereof with the auditor of state, together with the certificate, as required by the first section of this act, the persons named in the certificate of incorporation, or a majority of them, shall be commissioned to open books for the subscription of stock to the company, at such times and places as to them may seem convenient and proper, and shall keep the same open until the full amount specified in the certificate is subscribed; or in case the business of such company is proposed to be conducted on the plan of mutual insurance, then to open books to receive propositions and enter into agreement in the manner and to the extent specified in the third section of this act.

**SEC. 5. [Directors.]**—The affairs of any company organized under the provisions of this act shall be managed by not more than twenty-one nor fewer than five directors, all of whom shall be stockholders; within thirty days after the subscription books shall have been filled, a majority of the subscribers shall hold a meeting for the election of directors, each share entitling the holder thereof to one vote; and the directors then elected shall continue in office until their successors have been duly chosen and have accepted the trust.

**SEC. 6. [Capital—Investment.]**—It shall be lawful for any insurance company organized under the act, or incorporated under any law of this state, to invest its capital and the funds accumulated in the course of its business, or any part thereof, in bonds and mortgages on unincumbered real estate, within the state of Nebraska, worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company or companies and the policy or policies transferred to said company, and also in stocks of this state or stocks or treasury notes of the United States, in the stocks and bonds of any county or incorporated city in this state, which may have been therefore authorized to be issued by the legislature of this state, and to lend the same, or any part thereof, on the security of such stock, or lands, or treasury notes, or upon the bonds

and mortgages as aforesaid, and not otherwise; and to change and re-invest the same in like securities, as occasion may from time to time require; but any surplus money over and above the paid-up capital stock of any such company organized under this act or incorporated under any law of this state, may be invested in or loaned upon the pledge of public stocks of the United States or any of the stock, or stocks, bonds, or other evidences of indebtedness of any solvent, dividend paying institution incorporated under the laws of this state or the United States, except their own stock; *Provided, always*, That the current market value of such stock, bonds, or other evidences of indebtedness, shall be at all times during the continuance of such laws, at least twenty per cent. more than the sum loaned thereon.

**SEC. 7. [Certificate of organization.]**—Upon receiving notification that the requirements of the preceding sections have been complied with, the auditor of state shall make an examination, or cause one to be made by some disinterested person officially appointed by him for that purpose, and if it shall be found (if the examination shall be made other than [by] the auditor, then the finding shall be certified under oath), that the capital herein required by the company named, according to the nature of the business proposed to be transacted by such company, has been paid in and possessed by it in money, or in such stocks, notes, bonds, or mortgages, as are required by the third and sixth sections of this act, then he shall so certify; and if the examination be made by other than the auditor, then the finding shall be certified under oath; or, if it is proposed to be a mutual insurance company, that it has received and is in actual possession of the capital, premiums or bona-fide engagements of insurance, or the securities, as the case may be, to the extent and value required by the third and sixth sections of this act, the name and residence of the maker of each premium note forming part of the capital of any such proposed insurance company, and the amount of such note, shall be returned to the auditor. The corporators or officers of any such company or proposed mutual company contemplated by this act, shall be required to certify under oath, to the auditor of state, that the capital exhibited to the person making the examination directed in this section, was bona-fide property of the company so examined; the certificates above contemplated shall be filed in the office of said auditor, who shall thereupon deliver to such company a certified copy of the same, with his written permission for them to commence business as proposed in their written certificate of incorporation, which on being placed on record in the office of the recorder of the county in which the company is to be located, by the recorder, in a book prepared by him for that purpose, shall be their authority to commence business and issue policies; and such certified copy of said certificate may be used in evidence for or against said company with the same effect as the originals.

**SEC. 8. [Objects insurable.]**—It shall be lawful for any company organized under this act, or doing business in this state: *First*. To insure houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and to make all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water, or any vessel afloat, wherever the same may be. *Second*. To make insurance on the health of individuals, and against the personal injury, disablement, or death, resulting from traveling or general accidents by land or water. *Third*. To insure the fidelity of persons holding places of public or private trust. *Fourth*. To receive on deposit and insure the safe keeping of books, papers, moneys, stocks, bonds, and all kinds of personal property. *Fifth*. To insure horses, cattle, and other stock, against loss or damage by accident, theft, or any unknown or contingent event whatever which may be the subject of legal insurance; to lend money on bottomry or *respondentia*, and to cause itself to be insured against any loss or risk it may have incurred in the course of its business and upon the interest which it may have in any property by means of any loan or loans which it may have made on mortgage, bottomry, or *respondentia*; and generally to do and

perform all other matters and things proper to promote these objects; *Provided*, That no companies shall be organized to issue policies of insurance for more than one of the above five mentioned purposes; and no company that shall have been organized for either one of said purposes, shall issue policies of insurance for any other; and no company organized under this act, or transacting business in this state, shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent. on its paid-up capital, unless the excess shall be re-insured by the same in some other good and reliable company; *And Provided*, That the restriction as to the amount of risk any company shall assume shall not apply to companies organized to guarantee the fidelity of persons in places of public or private trust, nor to companies that receive on deposit and guarantee the safe keeping of books, papers, moneys, and other property.

**SEC. 9. [Directors—Election.]**—The annual meeting for the election of directors shall be holden during the month of January, as the by-laws of the company may direct; *Provided, however*, That if for any cause the stockholders shall fail to elect at any annual meeting, then they may hold a special meeting some day subsequent thereto for that purpose, by giving thirty days notice thereof in some newspaper in general circulation in the county in which the principal office of the company shall be located; and the directors chosen at any such annual or special meeting shall continue in office until the next annual meeting, and until their successors duly elected shall have accepted.

**SEC. 10. [Same—Vacancies—President.]**—The directors shall choose by ballot a president from their own number, and shall fill all vacancies which shall arise in the board or in the presidency thereof, and the board of directors thus constituted, or a majority of them, when convened at the office of the company, shall be competent to exercise all the powers vested in them by this act.

**SEC. 11. [Power of directors—Officers.]**—The directors of any such company shall have power to appoint a secretary and any other officer or agents necessary for transacting the business of the company, paying such salaries and taking such securities as they may deem reasonable; they may ordain and establish such by-laws and regulations, not inconsistent with this act or with the constitution and laws of the United States and of this state, as shall appear to them necessary for regulating and conducting the business of the company; and it shall be their duty to keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders, and to the inspection of persons invested by law with the right thereof.

**SEC. 12. [Policies—Attestation.]**—All policies or contracts of insurance made or entered into by the company may be made either with or without the seal of said company; but said policies shall be subscribed by the president or such other officer as may be designated by the directors for that purpose, and shall be attested by the secretary thereof.

**SEC. 13. [Stock transfers.]**—Transfers of stock may be made by any stockholder or his legal representative, subject to such restrictions as the directors shall, from time to time, establish in their by-laws, except as hereinafter provided.

**SEC. 14. [Capital increased.]**—Whenever any company organized under this act with less than the maximum capital limited in section three thereof, shall, in the opinion of the directors thereof, require an increased amount of capital, they shall, if authorized by the holders of a majority of the stock to do so, file with the auditor of state a certificate setting forth the amount of such desired increase not exceeding said maximum, and thereafter such company shall be entitled to have the increased amount of capital fixed by said certificate; and the examination of securities composing the capital stock thus increased shall be made in the same manner as provided in section seven of this act, for the capital stock first paid in.

**SEC. 15. [Dividends.]**—It shall not be lawful for the directors, trustees, or managers of any insurance company organized under this act, or incorporated under any law of this state to make any dividends except from the sur-

plus profit arising from their business, and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent. of the amount received as premiums on unexpired risks and policies, which amount so reserved is hereby declared to be unearned premiums; and there shall also be reserved all sums due the corporation on bonds and mortgages, bonds, stocks, and book accounts of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and upon which interest shall not have been paid; and in case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. Any dividends made contrary to these provisions shall subject the company making it to a forfeiture of their charter.

**Sec. 16. [Real estate].**—No company organized under this act shall purchase, hold, or convey any real estate, save for the purposes and in the manner herein set forth, to wit: *First.* Such as shall be requisite for its convenient accommodation in the transaction of its business. *Second.* Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due; or, *Third.* Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due; or, *Fourth.* Such as shall have been purchased at sales or upon judgments, decrees, or mortgages obtained or made for such debts. And it shall not be lawful for any such company to purchase, hold, or convey real estate in any other case, or for any other purpose, or acquired in any other manner, except that it may convey real estate which shall be found in the course of its business not necessary for its convenient accommodation in the transaction thereof; and all such last mentioned real estate shall be sold and conveyed within three years after the same shall have been deemed by the auditor of state unnecessary for such accommodation, unless the company shall procure a certificate from the said auditor that the interest of said company will materially suffer by a forced sale, in which event the sale may be postponed for such a period as the said auditor shall direct in said certificate.

**Sec. 17. [Security notes].**—All notes deposited with any mutual insurance company, at the time of its organization, as provided for in section three hereof, shall remain as security for all losses and claims, until the accumulation of the profits invested as required by the sixth section of this act shall equal the amount of cash capital required to be possessed by stock companies organized under this act, the liability of each note decreasing proportionately as the profits are accumulated; but any note which may have been deposited with any mutual insurance company, subsequent to its organization, in addition to the cash premiums, or any insurance effected with such company may, at the expiration of the time of such insurance, or upon the cancellation by the company of the policy, be relinquished, and given up to the maker thereof, or his legal representatives, upon his paying his proportion of losses and expenses which may have accrued thereon during such term. The directors or trustees of any such company shall have the right to determine the amount of the note to be given, in addition to the cash premiums, by any person insured in such company; and every person effecting insurance in any mutual company, and also their heirs, executors, administrators, and assigns, continuing to be so insured, shall thereby become members of said company during the period of insurance, and shall be bound to pay for losses and such necessary expense as aforesaid accruing to said company, in proportion to the amount of his or their deposit note or notes; *Provided,* That any person insured in any mutual company, except in the case of notes required by this act to be deposited at the time of its organization, may at any time return the policy of cancellation, and upon payment of the amount due at such time upon his premium note, shall be discharged from further liability thereon.

**Sec. 18. [Losses—Settlement].**—The directors shall, as often as they

deem necessary, after receiving notice of any loss or damage, settle and determine the sums to be paid by the several members thereof, as their respective portions of such loss, and publish the same in such manner as they shall deem proper, or the by-laws shall have prescribed; but the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the officers of the company within thirty days after the publication of said notice; and if any member shall, for the space of thirty days after personal demand, or by letter, for payment shall have been made, neglect, or refuse to pay the sum assessed upon him as his proportion of any loss aforesaid, the directors may sue for and recover the whole amount of his deposit note or notes, with costs of suit; but execution shall issue for assessments and costs as they accrue only, and every such execution shall be accompanied by a list of losses for which the assessment was made; if the whole amount of deposit notes shall be insufficient to pay the loss occasioned, the sufferers insured by the said company shall receive, toward making good their respective losses, a proportionate share of the whole amount of said notes, according to the sums to them respectively insured; but no member shall ever be required to pay for any loss more than the whole amount of his deposit note or notes.

**Sec. 19. [Company's title on policy.]**—Every insurance company hereinafter organized as provided in this act, shall, if it be a mutual company, embody the word "mutual" in its title, which shall appear upon the first page of every policy, and renewal receipt; and every company doing business as a cash stock company, shall, upon the face of its policies, express in some suitable manner that such policies were issued by stock companies.

**Sec. 20. [Annual statement.]**—It shall be the duty of the president or of the vice-president and secretary of each company organized under this act, or incorporated under any law of this state, or doing business in this state, annually, on the first day of January of each year, or within thirty days thereafter, to prepare under oath and deposit in the office of the auditor of state, a full, true, and complete statement of the condition of such company on the last day of the month preceding that in which such statement is filed, which last statement shall exhibit the following items and facts in the following form, viz: *First.* The amount of capital stock of the company. *Second.* The names of the officers. *Third.* The name of the company, and where located. *Fourth.* The amount of capital stock paid up. *Fifth.* The property or assets held by the company specifying the value as near as may be of the real estate owned by such company. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank the same is deposited. The amount of cash in the hands of agents, and in course of transmission. The amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, and its assessed valuation. The amount of all other bonds and loans, and how secured, with the rate of interest thereon. The amount due the company on which judgment has been obtained. The amount of stocks of this state, of the United States, of any incorporated city of this state, and of any other stock owned by the company, specifying the amount, numbers of shares, and par and market value of each kind of stock. The amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value. The amount of assessments on stock and premium notes paid and unpaid. The amount of interest actually due and unpaid. All other securities and their value. The amount for which premium notes have been given, on which policies have been issued. *Sixth.* The liabilities of such company, specifying the losses adjusted and due. Losses adjusted and not due. Losses unadjusted. Losses in suspense, and the cause thereof. Losses resisted and in litigation. Dividends either in scrip or cash specifying the amount of each declared, but not due. Dividends declared and due. The amount required to reinsure all outstanding risks on the basis of forty per cent. of the premium on all unexpired risks. The amount due banks or other creditors. The amount of money bor-

rowed and the security therefor. All other claims against the company. *Seventh.* The income of the company during the previous year, specifying the amount received for premiums exclusive of premium notes; the amount of premium notes received; the amount received for interest; the amount received for assessment calls on stock or notes, or premium notes. The amount received from all other sources. *Eighth.* The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement. The amount paid for dividends. The amount paid commissions, salaries, expenses, and other charges of agents, clerks, and other employees. The amount paid for salaries, fees, and other charges of officers and directors. The amount paid for local, state, national internal revenue, and other taxes and duties. The amount paid for all other expenses, expenditures, including printing, stationery, rents, furniture, etc. *Ninth.* The largest amount insured in any one risk. *Tenth.* The amount of risks written during the year then ending. *Eleventh.* The amount of risks in force having less than one year to run. *Twelfth.* The amount of risks in force having more than one, and not over three years to run. *Thirteenth.* The amount of risks having more than three years to run. *Fourteenth.* The following questions must be answered, viz: Are dividends declared on premiums received for risks not terminated? The auditor of state shall withhold the certificate of authority from any such company neglecting or failing to comply with the provisions of this section.

**SEC. 21. [Information to auditor.]**—The auditor of state is hereby authorized and empowered to address any inquiries to any insurance company in relation to its doings and condition, or any other matter connected with its transactions which he may deem necessary for the public good, or for a proper discharge of his duties; and it shall be the duty of any company so addressed, to promptly reply in writing thereto.

**SEC. 22. [Statement—Notes.]**—The statement of any company, the capital of which is composed in whole or in part of notes, shall, in addition to the foregoing, exhibit the amount of notes originally forming the capital, and also what proportion of said notes are still held by such company and considered capital.

**SEC. 23. [Foreign companies—Capital—Qualifications.]**—It shall not be lawful for any insurance company, association, or partnership, organized or associated for any of the purposes specified in this act, incorporated by, or organized under the laws of any other state of the United States, or any foreign government, directly or indirectly, to take risks or transact any business of insurance in this state, unless possessed of two hundred thousand dollars of actual paid up capital, exclusive of any assets of any such company as shall be deposited in any other states or territories for the special benefit or security of the insured therein. Any such company desiring to transact any such business as aforesaid, by an agent or agents in this state, shall appoint one attorney in each county in which agencies are established, resident at the county seat, and shall file with the auditor of state a written instrument, duly signed and sealed, authorizing such attorney of such company to acknowledge service of process for and in behalf of such company in this state, consenting that such service of process, *mesne* or final upon such attorney, shall be taken and held as valid as if served upon the company [according] to the laws of this or any other state, and waiving all claim or right of error by reason of such acknowledgment or service, and also a certified copy of their charter or deed of settlement, together with a statement under the oath of the president or vice-president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place where located, the amount of its capital, with a detailed statement of the facts and items as required from companies organized under the laws of this state, as per section twenty hereof. Such statement shall also show to the full satisfaction of the auditor of state, that said company has deposited, in some one



of the United States or territories, a sum not less than twenty-five thousand dollars, for the special benefit or security of the insured therein, and shall file also a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by the liabilities, as stated in section twenty of this act, to the extent of twenty per cent. thereof, while such deficiency shall continue.

**SEC. 24. [Same—Auditor's certificate.]**—It shall not be lawful for any agent or agents, or individual, to act for any insurance company or companies referred to in this act, directly or indirectly, in taking risks or transacting business of insurance in this state, without procuring from the auditor of state a certificate of authority, stating that such company has complied with all the requisitions of this act.

**SEC. 25. [Same—Annual statements.]**—The statements and evidences of investments required of foreign companies as above, shall be renewed annually in such manner and form as required by this act and as said auditor may direct, with any additional statement of the amount of the losses incurred or premiums received in this state during the preceding period, so long as such agency continues; and the said auditor, on being satisfied that the capital, securities, and investments remain secure, as hereinbefore provided, shall furnish a renewal of his certificate as aforesaid.

**SEC. 26. [Violation of act—Penalty.]**—Every insurance company organized under the laws of, or doing business in this state, shall conform to all the provisions of this act, applicable thereto, on or before the first day of April, 1878; and when necessary, any existing company shall change its charter and by-laws so as to conform thereto, by a vote of a majority of its board of directors, and any president, secretary or other officer of any company organized under the laws of Nebraska, or any officer or person doing business or attempting to do business in this state for any insurance company organized without this state, failing to comply with any of the requirements of this act, or violating any of the provisions thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding one thousand dollars and be imprisoned in the county jail for a period of not less than thirty days, nor more than six months.

**SEC. 27. [Agent's advertisement.]**—Every agent of any insurance company shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town, or village in which the company is located and the state or government, under the laws of which it is organized. The term agent or agents used in the foregoing sections shall include an acknowledged agent or surveyor, or any other person or persons, who shall in any manner directly or indirectly transact or aid in transacting the insurance business of any insurance company not incorporated by the laws of this state. The provisions of the foregoing sections relative to foreign companies, shall apply to all such companies, partnerships, associations, or individuals, whether incorporated or not; *Provided*, That none of the provisions of this clause shall be deemed operative in regard to insurance upon goods or merchandise *in transit*.

**SEC. 28. [Examination by auditor—Settlement.]**—It shall be the duty of the auditor of the state, whenever he shall deem it expedient so to do, in his judgment, to appoint one or more persons, not officers, agents or stockholders of any insurance company doing business in this state, to examine into the affairs and condition of any insurance company incorporated or doing business in this state, or to make such examination himself; and it shall be the duty of the officers, or agents of such company or companies, to cause their books to be opened for the inspection of the auditor or the person or persons so appointed, and otherwise facilitate such examination so far as may be in their power so to do, and for the purpose of arriving at the truth in such cases, the auditor, or person or persons so appointed by him, shall have power to examine, under oath, the officers or agents of any company or others, if necessary, relative to the business and condi

tion of said company; and whenever the auditor shall deem it best for the interest of the public so to do, he shall publish the result of such investigation in one or more papers of this state; and whenever it shall appear to the said auditor from such examination, that the assets and funds of any company incorporated in this state, are reduced or impaired by the liabilities of said company, as described under the head of liabilities in the statement required by this act, more than twenty per cent. below the paid up capital stock required by this act, may direct the officers thereof to require the stock holders to pay in the amount of such deficiency within such a period as he may designate in such requisition; or he shall communicate the fact to the attorney of state, whose duty it shall then become to apply to the district court, or, if in vacation, to one of the judges thereof for an order requiring said company to show cause why their business should not be closed; and the court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it shall appear to the satisfaction of said court or judge, that the assets and funds of said company are not sufficient as aforesaid, or that the interest of the public require it, the said court or judge shall decree a dissolution of said company, and a distribution of its effects; the said court or judge shall have the power to refer the application of the attorney of state to a referee, to inquire into and report upon the facts stated herein.

**SEC. 29. [Same—Deficiency.]**—Any company receiving the aforesaid requisition from the said auditor, shall forthwith call upon its stockholders for such amounts as will make its paid up capital equal to the amount filed by this act, or the charter of said company; and in case any stockholder shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement, in such time and manner as said auditor shall approve, it shall be lawful for the said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof, to issue new certificates for such number of shares as such stockholders may be entitled to, in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company, the value of such shares for which new certificate shall be issued to be ascertained under the direction of the said auditor, the company paying for the fractional parts of shares. And it shall be lawful for the directors of such company to create new stock, and dispose of the same, and to issue new certificates therefor, to an amount sufficient to make up the original capital of the company; and in the event of any additional losses, accruing upon new risks taken upon expiration of the period limited by the auditor, in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof.

**SEC. 30. [Same—Mutual companies.]**—If, upon such examination, it shall appear to the said auditor that the assets of any company chartered upon the plan of mutual insurance under this act, are insufficient to justify the continuance of such company in business, it shall be his duty to proceed in relation to such company, in the same manner as is herein required in regard to joint-stock companies; and the trustees or directors of such company are hereby made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by the said auditor for filling up the deficiency in the capital, and before such deficiency shall have been made up; any transfer of the stock of any company organized under this act, made during the pending of any investigation required above, shall not release the party making the transfer from his liability for losses which may have accrued previous to such transfer.

**SEC. 31. [Same—Certificate revoked.]**—The auditor of state shall be authorized to examine into the condition and affairs of any insurance company, as provided for in this act, doing business in this state, not organized under the laws of this state, or cause such examination to be made by some person or persons appointed by him, having no interest in any insurance company; and when-

ever it shall appear to the satisfaction of said auditor that the affairs of any such company are in an unsound condition, he shall revoke the certificate granted in behalf of such company, and shall cause the notification thereof to be published in some newspaper in general circulation, published at the state capital; and the agent or agents of such company are, after such notice, requested to discontinue the issuing of any new policies, or the renewal of any previously issued.

**SEC. 32. [Same—Fees.]**—There shall be paid by every company, association, person or persons, agent or agents, to whom this act shall apply, the following fees: For examination and filing of the first application of any company, and issuing of the certificate of license thereon, fifty dollars, which shall go to the auditor; for filing each annual statement herein required, twenty dollars; for each certificate of authority, two dollars; for every copy of paper filed as herein provided the sum of ten cents per folio, and fifty cents for certifying the same and affixing the seal of office thereto; all of which fees shall be paid to the officer required to perform the duties.

**SEC. 33. [Security deposits.]**—Whenever the existing or future laws of any other state of the United States shall require of insurance companies incorporated by or organized under the laws of this state, having agencies in such other state, or of the agents thereof, any deposit of securities in such state, for the protection of policy-holders, or otherwise, or any payment for taxes, fines, penalties, certificates of authority, license fees, or otherwise, greater than the amount required for such purposes, from similar companies of other states, by the then existing laws of this state, then, and in every such case, all companies of states establishing, or having therefore established an agency or agencies in this state, shall be and are hereby required to make the same deposit, for a like purpose, with the auditor of this state, and to pay said auditor, for taxes, fines, penalties, certificates of authority, license fees, or otherwise, an amount equal to the amount of such charges and payments imposed upon or required by the laws of such state, of the companies of this state, or the agents thereof.

**SEC. 34. [Certificate published.]**—It shall be the duty of every insurance company of the kind provided in this act, doing business in this state, organized under the laws of this state or any other state or country, to publish once, annually, in two newspapers of general circulation, one of which newspapers shall be published at the capital of the state, (and in case of companies organized in the state of Nebraska, one of which shall be published in the county where the principal office is located), a certificate from the auditor of state that such company has in all respects complied with the laws of this state relating to insurance.

**SEC. 35. [Examination—Expenses.]**—The necessary expenditures of any examination made or ordered to be made by the auditor of the state, under this act, shall be certified to by him and paid on his requisition by the company which is the subject of such examination; *Provided*, That the auditor of state shall have the power, upon receiving information that the capital of any company is impaired, to call upon any such company for a full statement of its condition, and in event of refusal or neglect of any company to answer the requisition of the auditor as aforesaid, he shall proceed to make the examination required by this act, and to take the necessary action to terminate the business of said company in this state.

**SEC. 36. [Examination—Blanks.]**—It shall be the duty of the auditor of state to cause to be prepared and furnished to each of the companies organized under the laws of this state, and to attorneys or agents of companies incorporated by other states and foreign governments, who may apply for the same, printed forms of statements required by this act, and he may from time to time make such changes in the form of these statements as shall seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore enumerated.

**SEC. 37. [Auditor's report.]**—It shall be the duty of the auditor of state to cause the information contained in the statements required of the companies

organized in this state, to be arranged in tabular form, and prepare the same in a single document for printing, and submit the same to the legislature, as a portion of his regular report to that body.

SEC. 38. [Repealed. See sec. 38, chap. 77.]

SEC. 39. [Mixed mutual and stock companies.]—It shall not be lawful for any company organized upon the mutual plan, to do business and take risks upon the stock plan, neither for a company organized as a stock company, to do business upon the plan of a mutual insurance company.

SEC. 40. [Unincorporated mutual companies.]—Nothing in this act shall be so construed as to prevent any number of persons, not exceeding two hundred, from making mutual pledges and giving valid obligations to each other for their own insurance from loss by fire or death; but such association of persons shall in no case insure any property not owned and occupied by one of their number, and no life, except that of their own number; nor shall the provisions of this act be applicable to such associations or companies; *Provided*, Such associations or companies shall in no case pay any salaries or compensations to officers, agents, or any other employees, and shall receive no premiums, nor make any dividends.

SEC. 41. [Acts repealed.]—That portion of chapter twenty-five, of the Revision of 1866, which relates to insurance companies, and all acts and parts of acts amendatory and supplementary thereto, are hereby repealed, except so far as the same relates to the business of life insurance companies; and the auditor of state is authorized to return the deposits made under section twelve, chapter twenty-five, of the Revision of 1866, when the companies making the same have complied with this act; *Provided*, such deposits shall not be needed for the payment of losses due from the company having made the same.

#### CHAPTER 44.—INTEREST.\*

SECTION 1. [Rate.]—Any rate of interest which may be agreed upon, not exceeding ten dollars per year upon one hundred dollars shall be valid upon any loan or forbearance of money, goods, or things in action; which rate of interest so agreed upon may be taken yearly, or for any shorter period, or in advance, if so expressly agreed. [1879 § 1, 118.]

SEC. 2. [Unagreed rates.]—Interest upon the loan or forbearance of money goods, or things in action, shall be at the rate of seven dollars per year upon one hundred dollars, unless a greater rate, not exceeding ten per cent. per annum, be contracted for by the parties.

SEC. 3. [Judgments—Decrees.]—Interest on all decrees and judgments for the payment of money, shall be from the date of the rendition thereof, at the rate of seven dollars upon each one hundred dollars annually, until the same shall be paid; *Provided*, That if said judgment or decree shall be founded upon any contract, either verbal or written, by the terms of which a greater rate of interest, not exceeding the amount allowed by law, than seven per centum shall have been agreed upon, the rate of interest upon such judgment or decree shall be the same as provided for by the terms of the contract upon which the same was founded.

SEC. 4. [Other cases.]—On money due on any instrument in writing, or on settlement of the account from the day the balance shall be agreed upon, on money received to the use of another, and retained without the owner's consent express or implied, from the receipt thereof, and on money loaned or due, and withheld by unreasonable delay of payment, interest shall be allowed at the rate of seven per cent. per annum. Unsettled accounts between parties shall bear interest after six months from the date of the last item thereof.

SEC. 41. See chapter entitled "Corporations," ante, page 130.

\*NOTE.—"An act to amend Chap. 34, General Statutes (being chapter XXVIII of the Revised Statutes of 1866) entitled Interest. Laws 1879, 113. Took effect June 1, 1879.

SEC. 1. Partial payments, how applied. 4 Neb. 193. 7 Id. 83.

SEC. 4. Interest on money refunded by creditor to purchaser at an execution sale, subsequently set aside, is not made as a statutory right but as damages sustained by being deprived of use of the money. 10 Neb. 137.

**SEC. 5. [Usury—Consequences—Agents.]**—If a greater rate of interest than is hereinbefore allowed shall be contracted for or received, or reserved, the contract shall not, therefore, be void; but if in any action on such contract, proof be made that illegal interest has been directly or indirectly contracted for, or taken, or reserved, the plaintiff shall only recover the principal, without interest, and the defendant shall recover costs; and if interest shall have been paid thereon, judgment shall be for the principal, deducting interest paid; *Provided*, The acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is illegal interest by the transaction of the agent, the principal will be held thereby as if he had done the same in person. Where the same person acts as agent for the borrower who obtains the money from the lender, he shall be deemed to be the agent of the lender also.

**SEC. 6. [Usurers—Witnesses.]**—Any person charged with taking illegal interest may be required to answer touching the same, on oath, in any civil proceeding.

**SEC. 7. [Tender.]**—Relief to a complain[an]t in case of an usurious loan, may be given without payment or tender by him of the principal sum.

**SEC. 8. [Witnesses—Perjury.]**—Any officer or agent of a person or a corporation, whether interested or not, may be summoned as witness in any action for usury against such person or corporation, and required to disclose all the facts of the case, but the testimony of such witness, or the answer of a party as required in section 6, shall not be used against such witness or party in any criminal prosecution for perjury.

**SEC. 9. [Yearly rates.]**—When in any law, or in any instrument in writing specifying a rate of interest, no period of time is mentioned for which such rate is to be calculated, it shall be deemed to be by the year.

**SEC. 10. [Warrants—Bonds.]**—All warrants issued by the proper authorities of the state, county, city, town, or other municipal subdivision less than a county, shall draw interest from and after the date of their presentation for payment, at the rate of seven per cent. per annum, and all bonds issued by any county, city, township, precinct, or school district, shall not draw interest at a rate exceeding eight per cent. per annum.

**SEC. 11. [Educational lands—Delinquent taxes.]**—The rate of interest fixed by this chapter shall not affect interest on purchase money of school, university, and agricultural college lands, or on lands delinquent or sold for the non-payment of taxes.

**SEC. 12. [Repealed original chapter.]**

**SEC. 5.** An agreement for a loan was made in New York, and money advanced there. Note was dated in Nebraska, payable in New York. It was void under New York usury laws. *Held*, there could be no recovery here. 1 Neb. 108. The lender of money at a lawful rate of interest cannot be charged with usury when without his knowledge or consent, the agent of the borrower applies for and negotiates a loan, and receives from the borrower a sum of money, which the borrower previously agreed to pay him, if he would secure the loan. 3 Neb. 259. But if a person employ another as his agent to loan money and puts funds in his hands for that purpose, if the agent charge unlawful interest, or receives a bonus for such loan, the transaction is usurious. 5 Neb. 264. And if such agent takes from the borrower a note and mortgage for the payment of a bonus or commission the transaction is usurious, and there can be no recovery. 6 Neb. 154. Whether the proviso to the above section making the agent of the borrower the agent of the lender, overrules these decisions, *quære*? A note drawing legal interest is not affected with usury by an indorsement or agreement of the maker, made after maturity, wherein he promises to pay a greater rate of interest than that allowed by law. In such case money paid in excess of lawful interest constitutes a payment *pro tanto* of the principal. 4 Neb. 205. 9 Neb. 455. Where one is intrusted with the business of loaning money, and exacts for its use, either directly or indirectly by whatever shift or device, interest in excess of the rate allowed by law, such transaction is usurious. 4 Neb. 206. 6 Neb. 154. 8 Neb. 426. 7 Neb. 58. A surety on a note may plead usury as a defense. 7 Neb. 58. Upon the expiration of a stay of execution, extension of time was granted defendant upon payment to the plaintiff's attorney with plaintiff's assent, of an attorney's fee in addition to interest. *Held*, usury. 8 Neb. 50. A, being the owner on an undivided interest in real estate, conveyed his interest to F, for the agreed price of \$350, for which he gave his note secured by a mortgage on the premises. In anticipation of this trade, A arranged with the plaintiff to sell him the note and security for \$275. To save the trouble of transferring the note and security, A requested F to make them directly to the plaintiff, which was done. *Held*, not usurious, the evidence showing it to be a *bona fide* purchase of security, and not a contrivance to evade the usury laws. 9 Neb. 15. Under this section a *bona fide* purchaser before maturity and without notice, takes the note free from the defense of usury; and where usury in the original transaction is proved, the burden of proof is on the plaintiff, to show the *bona fides* of his holding; but it is not sufficient for him to show payment of value, he must show good faith. A statement that he did not know or have reason to believe there would be a contest over it, is not sufficient to show good faith. 9 Neb. 229. 10 Neb. 86. To constitute usury there must be a contract between the lender and borrower, by which the lender receives or reserves a greater rate of interest than the maximum allowed by law. 10 Neb. 543.

## CHAPTER 45.—INTERNAL IMPROVEMENTS.

**SECTION 1. [Bonds].**—That any county or city in the state of Nebraska is hereby authorized to issue bonds to aid in the construction of any railroad, or other work of internal improvement, to an amount to be determined by the county commissioners of such county or the city council of such city, not exceeding ten per centum of the assessed valuation of all taxable property in said county or city; *Provided*, The county commissioners, or city council, shall first submit the question of the issuing of such bonds, to a vote of the legal voters of said county or city, in the manner provided by chapter nine of the Revised Statutes of the state of Nebraska, for submitting to the people of a county, the question of borrowing money. [1869 § 1, 92. G. S. 448.]

**SEC. 2. [Proposition to vote.]**—The proposition of the question must be accompanied by a provision to levy a tax annually for the payment of the interest on said bonds as it becomes due; *Provided*, That an additional amount shall be levied and collected to pay the principal of said bonds, when it shall become due; and, *Provided, further*, That no tax shall be levied or collected to pay any of the principal of said bonds until after the year 1880. [Amended 1870, 15.]

**SEC. 3. [Rate of interest.]**—The proposition shall state the rate of interest such bond shall draw, and when the principal and interest shall be made payable.

**SEC. 4. [Result of vote.]**—If two-thirds of the votes cast at any such election for the purposes herein set forth, be in favor of the propositions submitted, the county commissioners in the case of a county, and the city council, in the case of a city, shall cause the proposition and result of the vote to be entered upon the records of said county or city, and a notice of its adoption to be published for two successive weeks in any newspaper in said county or city, if there be one, and shall thereupon issue said bonds which shall be and continue a subsisting debt against such county or city, until they are paid and discharged. [Amended taking effect Dec. 1, 1875. Laws 1875, 87.]

**SEC. 5. [Taxes.]**—It shall be the duty of the proper officers of such county or city to cause to be annually levied, collected and paid to the holders of such bonds a special tax on all taxable property within said county or city, sufficient to pay the annual interest as the same becomes due; and when the principal of said bonds become due, such officers shall in like manner collect an additional amount sufficient to pay the same as it becomes due; *Provided*, That when any bonds have been heretofore issued, such officers shall not levy or collect any amount more than may be necessary to pay the amount annually falling due by the condition of such bonds until after the year 1880; *Provided*, That not more than 10 per centum of the principal of said bonds shall be collected in any one year, excepting where bonds have been heretofore issued, and by the conditions of such bonds are required to be paid in some other manner. [Amended 1870, 15.]

**SEC. 6. [Estoppel.]**—Any county or city which shall have issued its bonds,

**NOTE.**—"An act to enable counties, cities, and precincts to borrow money on their bonds, or to issue bonds to aid in the construction or completion of works of internal improvement in this state, and to legalize bonds already issued for such purpose." Laws 1869, 92. G. S. 448. Took effect Feb. 15, 1869. **NOTE**, also, that "an act authorizing precincts, townships and towns to vote bonds to aid in works of internal improvement," printed on p. 116, laws of 1879 contains no enacting clause as required by sec. 10, Art. III, Const. and is omitted from this volume. Provisions concerning registration of bonds, ante p. 69.

**DECISIONS.** The act is constitutional. 2 Neb. 377. 7 Id. 313. 10 Id. 279. The issuance of street bonds in cities of the second class is not governed by this act. 7 Neb. 273. A public bridge across the Platte river is a work of internal improvement for which bonds may be issued. 4 Neb. 456. 7 Id. 260. Where the question of issuing bonds to any railroad company was submitted to a vote without accompanying the same with a proposition to levy a tax to meet the liability incurred, held that bonds issued in pursuance of such vote were void. 6 Neb. 235. But the proposition need not contain provisions for levy of a tax to pay the principal, but only the interest. 6 Neb. 53. Where the vote authorized the commissioners to subscribe for stock in a railroad company, held, no authority for a donation of such bonds. 6 Neb. 235. The indebtedness authorized by this act cannot exceed ten per cent. of the assessed value of taxable property in the county, and this must be authorized by a two-thirds vote as provided in sec. 4. 7 Neb. 313. When a county votes aid in excess of the limit, the commissioners have no authority to issue bonds to any amount. Id. In an application for a mandamus to compel payment of bonds issued to aid in the construction of works of internal improvement, there should be a particular description of the works so the court can see by an inspection of the petition alone, that they are really of that character. 9 Neb. 459. The building of a county court house is not a work of internal improvement under these acts. 10 Neb. 280.

**SEC. 4.** The original section provided for the issuance of the bonds "upon a majority of the votes cast being in favor of the proposition submitted." G. S. 448.

in pursuance of this act, shall be estopped from pleading want of consideration therefor, and the proper officers of such county or city may be compelled, by *mandamus*, or otherwise, to levy the tax herein provided to pay the same.

**SEC. 7. [Precincts may issue bonds.]**—Any precinct, in any organized county of this state, shall have the privilege of voting to aid works of internal improvement, and be entitled to all the privileges conferred upon counties and cities by provisions of this act; and in such case the precinct election shall be governed in the same manner as is provided in this act, so far as the same is applicable, and the county commissioners shall issue special bonds for such precinct, and the tax to pay the same shall be levied upon the property within the bounds of such precinct. Such precinct bonds shall be the same as other bonds, but shall contain a statement showing the special nature of such bonds.

**SEC. 8. [Bonds heretofore issued.]**—All bonds heretofore voted and issued by any county or city in this state, to aid in the construction of any railroad or other work of internal improvement, are hereby declared to be legal and valid, and a lien upon all of the taxable property in such county or city, notwithstanding any defect or irregularity in the submission of the question to a vote of the people, or in taking the vote, or in the execution of such bonds, and, notwithstanding the same may not have been voted upon, executed, or issued in conformity with law, and such bonds shall have the same legal validity, and binding force, as if they had been legally authorized, voted upon, and executed; *Provided*, That nothing in this section, nor in this act, shall be so construed as to legalize, or in any way sanction any vote of the people of Nemaha county, heretofore had, for the purpose of aiding in the construction of any railroad, nor anything done by the county commissioners of said county authorizing said vote, or anything done by them in consequence of such vote.

**SEC. 9. [Taxes to pay principal.]**—That after the year 1880, the officers of any county or city may levy and collect, not exceeding 10 per centum of the principal of said bonds; *Provided*, Said bonds are not payable in installments not exceeding 10 per centum; and whenever any county, city, or precinct shall have on hand an amount exceeding two thousand dollars, for the payment of the principal of said indebtedness, the corporate authorities of such county or city shall advertise for the surrender of any such indebtedness; and the person offering to surrender such indebtedness on the lowest and best terms, shall receive the money, and surrender such indebtedness; and if, at any time, there shall have accumulated a sum exceeding ten thousand dollars, the same may be invested in Nebraska state stocks, or in United States stocks. [1870 § 3, 15.]

**SEC. 10. [Refunding taxes.]**—All taxes which have been paid to raise a sinking fund to pay the principal of such indebtedness, and now on hand shall be returned to the person paying the same. [1870 § 4, 15.]

#### REFUNDING BONDS.

**SEC. 11. [In lieu of outstanding bonds.]**—That any county, precinct, or city in the state of Nebraska, which has heretofore voted and issued bonds to aid in the construction of any railroad or other work of internal improvement, and which bonds or any part thereof still remain unpaid, and remain and are a legal liability against such county, and bearing interest at ten per centum per annum is hereby authorized to issue coupon bonds at a rate of interest not exceeding eight per centum per annum to be substituted in place of, and exchanged for such bonds heretofore issued, whenever such county, precinct, or city can effect such substitution and exchange, which substitution and exchange shall be dollar for dollar. [1877 § 1, 224.]

SEC. 7. Precinct bonds voted to aid in building a bridge across Platte river *held good*. 6 Neb. 49. 7 Id. 280. Payment can only be made upon warrants issued by county board. 9 Neb. 462. Levy of taxes to pay bonds may be compelled by *mandamus*, but a judgment obtained on precinct bonds in the United States Circuit Court against the commissioners of the county, of which such precinct is a part, is a nullity and its collection cannot be enforced by *mandamus*. 10 Neb. 24.

SECS. 11-13. "An act to authorize the issue of county bonds in certain cases." Laws 1877, 224. Took effect June 1, 1877

**SEC. 12. [Form of new bond.]**—The new bond so issued shall have recited therein the object of its issue, the whole of the act under which the issue is made, stating the issue to be in pursuance thereof, and shall also state the number date and amount of the bond or bonds for which it is substituted, and such new bond shall not be delivered until the surrender of the bond or bonds so designated. [Id. § 2.]

**SEC. 13. [No vote necessary.]**—The new bonds so issued shall not require a vote of the people to authorize such issue, and they shall be paid, and the levy be made and tax collected for their payment in accordance with laws now governing the said bonds heretofore issued. [Id. § 3.]

## CHAPTER 46.—JAILS.

**SECTION 1. [Rules for government.]**—The judges of the district courts of the several judicial districts of this state shall, from time to time, as they may deem necessary, prescribe, in writing, rules for the regulation and government of the jails in the several counties within their respective districts, upon the following subjects: *First.* The cleanliness of the prison and prisoners. *Second.* The classification of prisoners in regard to sex, age, and crime, and also persons insane, idiots and lunatics. *Third.* Beds and clothing. *Fourth.* Warming, lighting, and ventilation of the prison. *Fifth.* The employment of medical and surgical aid when necessary. *Sixth.* Employment, temperance, and instruction of the prisoners. *Seventh.* The supplying of each prisoner with a bible. *Eighth.* The intercourse between prisoners and their counsel and other persons. *Ninth.* The punishment of prisoners for violation of the rules of the prison. *Tenth.* Such other regulations as said judges may deem necessary to promote the welfare of said prisoners: *Provided,* That said rules shall not be contrary to the laws of this state. [R. S. 242. G. S. 451.]

**SEC. 2. [Publication of rules.]**—The said judges shall, as soon as may be, cause a copy of said rules to be delivered to the county commissioners in the several counties in their respective judicial districts; and it shall be the duty of said commissioners forthwith to cause the same to be printed, and to furnish the sheriff of their county with a copy of said rules, for each and every room or cell of said jail, and also to forward a copy of said rules by mail to the state auditor, who shall carefully file away and preserve the same.

**SEC. 3. [Posting rules.]**—The said sheriff shall, immediately on the receipt of said rules, cause a copy thereof to be posted up and continued in some conspicuous place in each and every room or cell in said jail.

**SEC. 4. [Revising rules.]**—The said judges may from time to time, as they may deem necessary, revise, alter, or amend said rules, and such revised, altered, or amended rules, shall be printed and disposed of by said commissioners and sheriff in the same manner as is directed by the second and third sections of this chapter.

**SEC. 5. [Sheriff in charge.]**—The sheriff, or, in case of his death, removal or disability, the person by law appointed to supply his place, shall have charge of the county jail of his proper county, and of all persons by law confined therein, and such sheriff or other officer is hereby required to conform, in all respects, to the rules and directions of said district judge above specified, or which may, from time to time, by said judge be made, and communicated to him by said commissioners.

**SEC. 6. [Register.]**—The sheriff, or other officer performing the duties of sheriff, of each county of this state, shall procure, at the expense of the proper county, a suitable book to be called the jail register, in which the said sheriff, by himself or his jailer, shall enter—*First.* The name of each prisoner, with the date and cause of his or her commitment. *Second.* The date or manner of his or her discharge. *Third.* What sickness, if any, has prevailed in the jail during the



year, and if known, what were the causes of such disease. *Fourth.* Whether any or what labor has been performed by the prisoners, and the value thereof. *Fifth.* The practice observed during the year, of whitewashing and cleaning the occupied cells or apartments, and the times and seasons of so doing. *Sixth.* The habits of the prisoners as to personal cleanliness, diet and order. *Seventh.* The operations of the rules and directions prescribed by the district judge. *Eighth.* The means furnished prisoners, of literary, moral and religious instruction, and of labor. *Ninth.* All matters required by said rules, or in the discretion of such sheriff deemed proper. The said sheriff, or other officer performing the duties of sheriff, shall carefully keep and preserve the said jail register in the office of the jailer of his proper county, and at the expiration of said office shall deliver the same to his successor in office.

**SEC. 7. [Sheriff's report.]**—The sheriff, or other officer performing the duties of sheriff, shall on or before the first day of November in each year, make out in writing from said jail register, a jail report, one copy of which said report he shall forthwith file in the office of the clerk of the district court of the proper district, one copy with the county clerk of his county, for the use of the commissioners thereof, and one copy of said report he shall transmit to the secretary of state, and it shall be the duty of the secretary of state to communicate the reports of the several sheriffs of the state to the legislative assembly, on or before the first day of its session.

**SEC. 8. [Charge to grand jury.]**—It shall be the duty of the district court to give this chapter in charge to the grand jury once each term of said court, and lay before them any and all rules, plans, and regulations, established by the district judge, relating to county jails and prison discipline, which shall then be in force.

**SEC. 9. [Examination by grand jury.]**—The grand jury of each county in this state shall, once at each term of the district court, while in attendance, visit the jail; examine its state and condition; examine and inquire into the discipline and treatment of prisoners, their habits, diet, and accommodations; and it shall be their duty to report to said court in writing, whether the rules of the said district judge have been faithfully kept and observed, or whether any of the provisions of this chapter have been violated, pointing out particularly in what said violation, if any, consists. It shall be also the duty of the county commissioners of each county of this state, to visit the jail of their county once during each of their sessions, in January, April, July and October of each year.

**SEC. 10. [Furniture—Physician.]**—It shall be the duty of the county commissioners at the expense of their respective counties to provide suitable means for warming the jail and its cell or apartments, frames and sacks for beds, night buckets, and such other permanent fixtures and repairs as may be prescribed by the said district judge; said commissioners shall also have power to appoint a physician to the jail, when they may deem it necessary, and pay him such annual or other salary as they may think reasonable and proper, which salary shall be drawn out of the county treasury.

**SEC. 11. [Jailer—Compensation.]**—That the sheriffs or jailers of the several counties, who have the custody of the state prisoners confined in the jails of such counties, shall receive for boarding such prisoners, the sum of seventy five cents per day; and such sheriffs and jailers are hereby authorized to provide such fuel, lights, washing, and clothing, as may be necessary for the comfort of such prisoners, while in their custody; and such sheriffs or jailers shall, on the first day of January, April, July, and October, or each year, make a report in writing, to the state auditor, of the number of state prisoners in his custody for the last three months before making his report, when committed, and for what time, and the amount due him for boarding such prisoner; the amount of clothing fur-

SEC. 11. The amendment to this section made in 1873, G. S. 454, held void. 8 Neb. 38. See decision based on amendment, as to compensation of sheriff for keeping prisoners. 5 Neb. 40. See sec. 5, ante p. 275, less of sheriff for guarding prisoners, passed subsequent to this section.

nished each prisoner and the cost of the same; also the amount expended by him for washing, lights, and fuel, for that quarter; which account shall be sworn to by said sheriff or jailer, before the clerk of the county of which he is sheriff or jailer, and certified to under his seal. Thereupon the state auditor shall draw his warrant upon the state treasurer for the amount due such officer, payable to him; and when the condition of the jails in this state requires a constant guard to be kept, to prevent the escape of prisoners confined therein, the sheriff shall be allowed the sum of three dollars per day, for guarding, or procuring guard for such prisoners, which shall be paid him quarterly, with the amount paid him for board, washing, fuel, lights, and clothing. [Amended 1869, 171.]

**Sec. 12. [Visits by sheriff.]**—The sheriff shall visit the jail in person, and examine into the condition of each prisoner, at least once in each month, and once during each term of the district court; and it is hereby made his duty to cause all the cells and rooms, used for the confinement of prisoners, to be thoroughly whitewashed, at least three times in each year.

**Sec. 13. [Jailer.]**—The jailer, or keeper of the jail shall, unless the sheriff elect to act as jailer in person, be a deputy appointed by the sheriff, and such jailer shall take the necessary oath before entering upon the duties of his office; *Provided*, The sheriff shall, in all cases, be liable for the negligence or misconduct of the jailer, as of other deputies.

**Sec. 14. [Violation of act—Penalty.]**—If the sheriff or jailer, having charge of any county jail, shall neglect or refuse to conform to all or either of the rules and regulations established by said judge, or to perform any other duty required of him by this chapter, he shall, on conviction thereof, by indictment, for each case of such failure or neglect of duty aforesaid, pay into the county treasury of the proper county, for the use of such county, a fine not less than five dollars, nor more than one hundred dollars, to be assessed by the district court of the proper district.

#### CHAPTER 47.—JOURNALS AND LAWS.

**SECTION 1. [Distribution.]**—The secretary of state is hereby authorized to distribute the laws and journals of the state, as hereinafter prescribed.

**Sec. 2. [Requisition by county clerk.]**—The county clerk of each organized county shall make a requisition upon the secretary of state for sixty copies (or as many less than that amount as he shall find necessary for the county) of the laws, and fourteen copies of the journals of each branch of the legislative assembly, for the use of the county of which he is clerk; and he shall name the conveyance or means of transportation, and shall also specify to whom they shall be directed, and to whose care, and upon the receipt of such requisition the secretary shall at once forward the required number of laws and journals as specified in the requisition of such county clerk, and the county clerk shall receipt for the same to the secretary, which receipt shall be filed in the office of the secretary of state.

**Sec. 3. [Distribution by county clerk.]**—The county clerk shall distribute one copy of the laws to each of the officers of the county, as follows: The probate or county judge; each member of the board of county commissioners; the sheriff; the county treasurer; the county surveyor; the prosecuting attorney; each notary public; each justice of the peace; each constable; each road supervisor; and each precinct assessor, in said county. He shall also reserve one for himself, and give two copies each of the laws and journals to every councilman and representative who was a member of the legislative assembly by which the laws were enacted.

**Sec. 4. [Preservation.]**—Each officer shall deliver up to his successor in office, all statutes which shall have come into his possession under the provisions of this chapter, as soon after his successor shall have qualified as such successor or the county clerk may require.

**SEC. 5. [Sale by county clerk.]**—After the above distribution, the copies remaining in the hands of the county clerk shall be sold at public auction (ten days notice having been given in three public places in each county) to the highest bidder, no person, however, to purchase more than two copies; and the proceeds of such sale shall go, first, to defray the cost of transportation from the secretary of state to the county clerk, and the remainder, if any shall exist, shall be paid over to the state librarian, and to be by him held subject to the order of the legislative assembly.

**SEC. 6. [Sale by secretary of state—Library.]**—After having so distributed the laws and journals of each legislative assembly, the secretary is authorized to sell copies of the laws at a price at least equal to cost, and the amount so received shall be applied to the library fund of the state. The secretary of state shall deliver all copies of the laws and journals yet in his possession to the state librarian, who shall officially receipt therefor.

**SEC. 7. [Distribution by librarian.]**—The librarian shall, upon the order of either of the judges of the supreme court, issue one copy each to the district attorney, United States marshal, each register and receiver of all United States land offices in the state, each United States commissioner residing in the state, and such other officers as the judges in their discretion may direct; *Provided, always,* That the librarian shall permit no person to take away a copy or copies of the laws and journals, without taking a receipt therefor.

**SEC. 8. [Same—Legislature.]**—The members of each succeeding legislative assembly shall be furnished by the state librarian, at the commencement of each session for which they are elected, with one copy each of the laws and journals of the preceding session.

#### CHAPTER 48.—LEGISLATURE.

**SECTION 1. [Certificate of members.]**—The clerks of each house shall file the certificates presented by members, each for his own house, and make a roll of the members who thus appear to be elected, and the persons thus appearing to be elected members shall proceed to elect such other officers as may be required for the time being. [R. S. § 8. G. S. § 8.]

**SEC. 2. [Joint committee on credentials.]**—When the houses are temporarily organized they shall elect a committee of five on the part of the house and three on the part of the senate, by ballot, which committee shall examine and report upon the credentials of those claiming to be elected members of their respective houses, and when such report is made, those reported as elected shall proceed to the permanent organization of their respective houses, and each house shall be the sole judge of the election returns and qualifications of its own members. [Id. § 4.]

**SEC. 3. [Oaths.]**—Any member may administer oaths in the house of which he is a member, and while acting on a committee may administer oaths on the business of such committee. [Id. § 5.]

**SEC. 4. [Not liable for words spoken in debate.]**—No member of the legislative assembly shall be questioned in any other place for any speech or words spoken in debate in either house. [Id. § 6.]

**SEC. 5. [Contempts.]**—Each house of the legislative assembly has power and authority to punish as a contempt, by fine or imprisonment, or either of them, the offense of knowingly arresting a member in violation of his privilege; of assaulting or threatening to assault a member, or threatening to do him any harm, in person or property, for anything said or done in either house, as a member thereof; of attempting, by menace or other corrupt means, to control or influence a member in giving his vote, or to prevent his giving it; of disorderly or contemptuous conduct, tending to disturb its proceedings; of refusing to attend, or to be sworn,

or to be examined as a witness before either house or a committee, when duly summoned; of assaulting or preventing any person going to either house, or its committee, by order thereof, knowing the same; of rescuing or attempting to rescue any person arrested by order of either house, knowing such arrest; and of knowingly injuring any officer of either house in the discharge of his duties as such. [Id. § 7.]

SEC. 6. [**Imprisonment.**—Imprisonment for contempt of either house, shall not be for more than six hours, and shall be in the jail of the county in which the legislative assembly may then be sitting, or if there be no jail, then in one of the nearest county jails. [Id. § 8.]

SEC. 7. [**Fine.**—Should a fine be imposed for any offense mentioned in section seven, it shall not exceed fifty dollars. [Id. § 9.]

SEC. 8. [**Same—Warrant of commitment.**—Fines and imprisonment shall be only by virtue of an order of the proper house, entered on its journals, stating the grounds therefor. Imprisonment shall be effected by a warrant, under the hand of the presiding officer, for the time being, of the house ordering it, countersigned by the clerk of the house, running in the name of the state and directed to the sheriff of the proper county; and under such warrant, the officer of the house, sheriff and jailer will be authorized to arrest and detain the person. [Id. § 10.]

SEC. 9. [**Same—Collection.**—Fines shall be collected by virtue of a similar warrant, directed to any proper officer of the county in which the offender has property, and executed in the same manner as executions for fines issued by courts of justice, and the proceeds shall be paid into the state treasury. [Id. § 11.]

SEC. 10. [**Punishment no bar.**—Punishment for contempt, as in this chapter provided, is no bar to any other proceeding, civil or criminal, for the same offense. [Id. § 12.]

SEC. 11. [**Officers and employees of senate.**—That the officers and employees of the senate shall consist of a president, secretary, assistant secretary, sergeant-at-arms, door-keeper, enrolling clerk, engrossing clerk, chaplain, and one page. [1867 § 1, 85.]

SEC. 12. [**Officers and employees of house.**—The officers and employees of the house of representatives shall consist of a speaker, chief clerk, assistant clerk, sergeant-at-arms, door-keeper, enrolling clerk, engrossing clerk, chaplain, and two pages. [Id. § 2.]

SEC. 13. [**Officers' per diem.**—There shall be paid to each of the several officers and employees named in this act, for the official services rendered by them under the provisions of this act, the following sums, and no more: The president of the senate and speaker of the house of representatives, shall each be entitled to receive the sum of three dollars per day; the secretary and chief clerk, the sum of four dollars per day; the assistant clerks, the sum of four dollars per day; the sergeant-at-arms, the sum of three dollars per day; the door-keeper, the sum of three dollars per day; the chaplains, the sum of three dollars per day; and the pages the sum of one dollar and fifty cents per day; enrolling and engrossing clerks three dollars per day. [Id. § 3.]

SEC. 14. [**Officers' duties.**—It shall be the duty of the president of the senate, and speaker of the house of representatives to preside over their respective houses, to keep and maintain order during the sessions thereof, and to do and perform the duties devolving on them by general parliamentary usage, and the rules adopted by the two houses. It shall be the duty of the chief clerk of the house of representatives, and the secretary of the senate, to attend the sessions of the respective houses, to call the rolls, read the journals, bills, memorials, resolutions, petitions, and all other papers or documents necessary to be read in either house, to keep a correct journal of the proceedings in each house, and to do and perform such other duties as may be imposed upon them by the two

SECS. 11-14. "An act fixing the number of officers and employees of the senate and house of representatives, to define their duties and establish their pay." Laws 1867, 85. Took effect June 22, 1867.

houses, or either of them. The assistant clerk and assistant secretary shall be under the control and direction of the chief clerk and secretary respectively, and shall assist them in the proper discharge of their duties, and shall do and perform such other services as may be directed by the two houses, or either of them. It shall be the duty of the sergeants-at-arms to enforce the attendance of absent members, when directed properly so to do, to arrest all members or other persons, when lawfully authorized so to do, to keep and preserve order during the session of each house, to convey to the postoffice the mail matter sent by the respective members, and to receive from the said office the mail matter for the said members, and to deliver the same to them on each morning of the session; to obey and enforce the orders of the presiding officers, and to do and perform such other duties as may be enjoined on them by law, and the respective houses. It shall be the duty of the door-keepers, to prepare, and keep in order, the senate chamber and hall of the house, including cleaning and warming the same; to attend to and keep closed the door and bar of the respective houses, unless otherwise directed by the presiding officers thereof; and to do and perform such other duties as may be enjoined on them by either house. It shall be the duty of the engrossing clerk to correctly engross such bills as may be required to be engrossed by the committee on engrossed and enrolled bills, and to perform such other duties as may be required by either house. It shall be the duty of the enrolling clerk to correctly and neatly enroll all such bills as may be placed in his hands therefor, and to perform such other duties as may be enjoined on him by either house. It shall be the duty of the chaplains to open the sessions of each house with prayer, and to perform such other duties as may be imposed on them. And it shall be the duty of the pages to act under and as directed by the presiding officers of the respective houses. It shall also be the duty of the sergeant-at-arms to procure a national flag, and to place the same on the top of the capitol building, there to be kept during the time each or either of the two houses shall be in session, and after the adjournment of the two houses, the said flag shall be taken down and kept down until the opening of the session of one of the two houses. [Id. § 4.]

**SEC. 15. [Proposals for printing.]**—The auditing board for state printing consisting of the secretary of state, auditor of public accounts, and state treasurer, shall within thirty days after the adjournment of each session of the legislature receive proposals from the daily newspapers of the state, for one publication in said paper of a statement to be prepared by the auditor of public accounts as hereinafter provided. [1877 § 1, 157.]

**SEC. 16. [Contract.]**—The said board of audit shall award the contract to one of the three daily papers having the largest daily circulation in the state, the same to be ascertained by the affidavit of the publishers thereof, and from such other reliable information as said board may be able to obtain. [Id. § 2.]

**SEC. 17. [Auditor to prepare statements.]**—After said award has been made as aforesaid, the auditor of public accounts shall prepare or cause to be prepared, a certified statement of all appropriations whatever made by the last session of the legislature, and also a full statement of the expenses of said legislative session, specifying the amount of each item, and to whom and for what paid. [Id. § 3.]

**SEC. 18. [Expenses.]**—The expenses incurred by virtue of the provisions of this act, shall be audited and paid in the manner now provided by law for the payment of other state printing. [Id. § 4.]

## CHAPTER 49.—LIBRARIES.\*

**SECTION 1. [Establishment—Taxes.]**—The city or town council of each incorporated city or town shall have power to establish and maintain a public

SECS. 15-18. "An act to provide for preparing and publishing a full statement of moneys expended at each session of the legislature." Laws 1877, 157. Took effect June 1, 1877.

\*NOTE.—"A bill for an act to authorize towns and cities to establish and maintain free public libraries and reading rooms." Laws 1877, 150. Took effect June 1, 1877.

library and reading room for use of the inhabitants of such city or town, and may levy a tax of not more than one mill on the dollar annually, to be levied and collected in like manner as other taxes of said city or town, and to be known as the library fund. [1877 § 1, 150.]

SEC. 2. [**Directors.**].—When any city or town council shall have decided by ordinance to establish and maintain a public library and reading room under this act, they shall elect a library board of nine directors, to be chosen from the citizens at large, of which board neither the mayor or any member of the city or town council shall be a member. Such directors, first elected, shall hold their office, three for the term of one year, three for the term of two years, and three for the term of three years, from the first day of July following their appointment, and three directors shall be chosen annually thereafter, and in cases of vacancies by resignation, removal, or otherwise, the council shall fill such vacancy for the unexpired term, and no director shall receive any pay or compensation for any services rendered as a member of such board, and such directors shall give such bond as the council may require.

SEC. 3. [**Same—Powers—Duties.**].—Such directors shall, immediately after their appointment, meet and organize, by electing one of their number president, and such other officers as may be necessary. Five of such board shall be a quorum. They shall have power to make and adopt such by-laws, rules, and regulations for their own guidance, and for the government of the library and reading room as they may deem expedient, subject to the supervision and control of the city or town council, and not inconsistent with this act. They shall have exclusive control of expenditures of all moneys collected or donated to the credit of the library fund, and of the renting or construction of any library building, the supervision, care, and custody of the grounds, rooms or buildings, constructed, leased or set apart for that purpose.

SEC. 4. [**Funds.**].—Any tax levied or collected, or funds donated thereto, shall be kept for the use of such library separate and apart from other funds of said city or town, and shall be drawn upon by the proper officers upon the authenticated vouchers of the library board, and shall not be used or disbursed for any other purpose.

SEC. 5. [**Board—Powers—Rules.**].—The library board shall have power to purchase or lease grounds; to erect, lease, or occupy an appropriate building, for the use of such library; to appoint a suitable librarian and assistants, to fix their compensation, and to remove their appointments at pleasure; and shall have power to establish regulations for the government of such library as may be deemed necessary for its preservation, and to maintain its usefulness and efficiency, and to fix and impose by general rules, penalties, and forfeitures, for trespasses, or injury upon or to the library grounds, rooms, books, or other property, or failure to return any book, or for violation of any by-law or regulation; and shall have and exercise such power as may be necessary to carry out the spirit and intent of this act, in establishing and maintaining a public library and reading room.

SEC. 6. [**Library free.**].—Every library and reading room established under this act, shall be forever free to the use of the inhabitants of the city or town, subject always to such reasonable regulations as the library board may adopt to render said library and reading room of the greatest use to the inhabitants of said city or town, and the board may exclude from the use of the library and reading rooms, any person who shall wilfully violate or refuse to comply with rules and regulations established for the government thereof.

SEC. 7. [**Report of board.**].—The library board shall, on or before the second Monday in June in each year, make a report to the city or town council, of the condition of their trust on the first day of June in such year, showing all moneys received or expended, the number of books and periodicals on hand, newspapers and current literature subscribed for or donated to the reading room department; the number of books and periodicals ordered by purchase, gift, or obtained dur-

ing the year, and the number lost or missing; the number of visitors attending; the number of and character of books loaned or issued, with such statistics, information, and suggestions, as they may deem of general interest, or as the city or town council may require, which report shall be verified by affidavit of the proper officers of said board.

**SEC. 8. [Regulations amended.]**—Any by-law or regulation established by the library board, may be amended or annulled by the council of said city or town.

**SEC. 9. [Penalties, how recovered.]**—Penalties imposed or accruing by any by-law or regulation of the library board may be recovered in a civil action before the police judge, or any justice of the peace, or other court having jurisdiction; such action to be instituted in the name of the "library board of the city or town library," and moneys collected in such action shall be forthwith placed in the city treasury to the credit of the library fund.

**SEC. 10. [Donations.]**—Any person may make any donation of money or lands for the benefit of such library, and the title to property so donated may be made to and shall vest in the library board, and their successors in office, and such board shall thereby become the owners thereof in trust to the uses of the public library of such city or town.

**SEC. 11. [Exemptions.]**—The property of such library shall be exempt from execution, and shall also be exempt from taxation as other public property.

**SEC. 12. [Deposits of reading matter by owners.]**—The library board shall have power to authorize any circulating library, reading matter, or work of art, of any private person, association or corporation, to be deposited in the public library rooms, to be drawn or used outside of the rooms only on payment of such fee or membership as the person, corporation or association owning the same may require. Deposits may be removed by the owner thereof at pleasure, but the books or other reading matter so deposited in the rooms of any such public library shall be separately and distinctly marked, and kept upon shelves apart from the books of the public city or town library, and every such private or associate library, or other property so deposited in any public library, while so placed or remaining shall be subject to use and reading within the library room without charge by any person, an inhabitant of said city or town, and entitled to the use of the free library.

## CHAPTER 50.—LIQUORS.

**SECTION 1. [Petition to county board.]**—The county board of each county may grant license for the sale of malt, spirituous and vinous liquors, if deemed expedient, upon the application by petition of thirty of the resident freeholders of the town, if the county is under township organization, and if not under township organization, then thirty of the resident freeholders of the precinct where the sale of such liquor is proposed to take place, setting forth that the applicant is a man of respectable character and standing and a resident of this state, and praying that license may be issued to him. Such application to be filed in the office of the county clerk and upon the payment into the county treasury of such sum as the board may require, not less than five hundred (\$500) dollars for each license and upon the compliance with the provisions of this act; *Provided*, Such board shall not have power to issue any license for the sale of any liquors in any city or incorporated village or within two miles of the same. [1881, chap. 61.]

**SEC. 2. [Notice of application.]**—No action shall be taken upon said

NOTE.—"An act to regulate the license and sale of malt, spirituous and vinous liquors and to repeal chapter LIII of the code of criminal procedure of the General Statutes of 1873 entitled "License and sale of liquors," and to repeal an act entitled "An act to amend section 575 of chapter 53 of the criminal code," approved February 9th, 1875, and to repeal an act entitled "An act to regulate the issuance of licenses for the sale of malt, vinous and spirituous liquors in the State of Nebraska," approved February 25, 1875." Approved Feb. 28. Took effect June 1, 1881. Decisions under prior laws, 3 Neb. 104. 5 Id. 306, 313, 513. 6 Id. 14, 110, 310. 7 Id. 378. 8 Id. 33, 161. 9 Id. 191, 309. See also 10 Neb. 515

application until at least two weeks notice of the filing of the same has been given by publication in a newspaper published in said county, having the largest circulation therein, or if no newspaper is published in said county, by posting written or printed notices of said application in five of the most public places in the town, precinct, village or city in which the business is to be conducted, when, if there be no objections in writing made and filed to the issuance of said license, and the county board is in session, and all other provisions of this chapter have been fully complied with, it may be granted.

**Sec. 3. [Remonstrance.]**—If there be any objection, protest or remonstrance filed in the office where the application is made against the issuance of said license, the county board shall appoint a day for hearing of said case, and if it shall be satisfactorily proven that the applicant for license has been guilty of the violation of any of the provisions of this act within the space of one year, or if any former license shall have been revoked for any misdemeanor against the laws of this state, then the board shall refuse to issue such license.

**Sec. 4. [Hearing—Appeal.]**—On the hearing of any case arising under the provisions of the last two sections, any party interested shall have process to compel the attendance of witnesses who shall have the same compensation, as now provided by law in the district court, to be paid by the party calling said witnesses. The testimony on said hearing shall be reduced to writing and filed in the office of application, and if any party feels himself aggrieved by the decision in said case he may appeal therefrom to the district court, and said testimony shall be transmitted to said district court and such appeal shall be decided by the judge of such court upon said evidence alone.

**Sec. 5. [License—Form.]**—The license shall state the time for which it is granted, which shall not exceed one year, the place where the liquor is to be sold, and shall not be transferable; and any license granted under this chapter may be revoked by the authority issuing the same whenever the person licensed shall, upon due proof made, be convicted of a violation of any of the provisions of this act. The license shall be in the following form, as near as practicable.

STATE OF NEBRASKA, County of — ss. To all who shall see these presents:

Know ye, that — having on the — day of — A. D. 18—, filed his petition and bond according to law and paid into the treasury the sum imposed on him as a vendor of malt, spirituous and vinous liquors, therefore the said — is hereby authorized to sell malt, spirituous and vinous liquors at — for — months ending the — day of — A. D. 18—

In testimony whereof, I —, clerk of — have affixed the seal of said —, this — day of — A. D. 18—

[SEAL.]

—, Clerk.

**Sec. 6. [Bond.]**—No person shall be licensed to sell malt, spirituous or vinous liquors, by any county board, or the authorities of any city or village, unless he shall first give bond in the penal sum of five thousand (\$5,000) dollars, payable to the state of Nebraska with at least two good and sufficient sureties, freeholders of the county in which the license is to be granted, to be approved by the board who may be authorized to issue the license, conditioned that he will not violate any of the provisions of this act, and that he will pay all damages, fines and penalties and forfeitures which may be adjudged against him under the provisions of this act. The board taking such bond may examine any person offered as security upon any such bond, under oath, and require him to subscribe and swear to his statement in regard to his pecuniary ability to become such security. Any bond taken pursuant to this section may be sued upon for the use of any person, or his legal representatives, who may be injured by reason of the selling or giving away any intoxicating liquor by the person licensed, or by his agent or servant.

**Sec. 7. [Surety.]**—No person who is holden as the principal or surety upon any bond given under the provisions of the preceding section, shall be permitted to become a surety upon any other bond of like character.

**Sec. 8. [Selling to minors, etc.]**—Every person licensed as herein provided, who shall give or sell any malt, spirituous and vinous liquors, or any



intoxicating drinks to any minor, apprentice, or servant, under twenty-one years of age, shall forfeit and pay for each offense the sum of twenty-five dollars.

**Sec. 9. [Misrepresenting age.]**—Any minor, apprentice or servant who shall for the purpose of evading the provisions of the preceding section, falsely represent his age, shall be deemed guilty of misdemeanor and fined for each and every offense not exceeding twenty dollars, or imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court.

**Sec. 10. [Selling to Indian, insane or drunkard.]**—Every person so licensed who shall sell any intoxicating liquors to any Indian, insane person, or idiot, or habitual drunkard, shall forfeit and pay for each offense the sum of fifty dollars.

**Sec. 11. [Disposing without license.]**—All persons who shall sell or give away upon any pretext, malt, spirituous, or vinous liquors, or any intoxicating drinks, without having first complied with the provisions of this act, and obtained a license as herein set forth, shall for each offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not to exceed one month in the county jail, and shall be liable in all respects to the public and to individuals, the same as he would have been had he given bonds and obtained license as herein provided.

**Sec. 12. [Same—Hearing before magistrate.]**—The magistrate, before whom any complaint is made of a violation of the provisions of the preceding section, shall issue a warrant for the arrest of the offender, and if upon an examination the magistrate shall have reason to believe the party guilty, he shall recognize him to appear at the next term of the district court as in cases of felony.

**Sec. 13. [Disposing of adulterated liquors.]**—Every person so licensed, or any other person, who shall intentionally or otherwise, sell or give away, or direct or permit any person or persons in his employ to sell or give away any malt, spirituous, or vinous liquors, which shall be adulterated with strychnine, strontia, sugar of lead, or any other substance, shall forfeit and pay the sum of one hundred dollars for every such offense. An analysis made by a practical chemist shall be deemed competent testimony under the provisions of this section.

**Sec. 14. [Election days—Sundays.]**—Every person who shall sell or give away any malt, spirituous and vinous liquors on the day of any general or special election, or at any time during the first day of the week, commonly called Sunday, shall forfeit and pay for every such offense, the sum of one hundred dollars.

**Sec. 15. [Civil damages.]**—The person so licensed shall pay all damages that the community or individuals may sustain in consequence of such traffic, he shall support all paupers, widows and orphans, and the expenses of all civil and criminal prosecutions growing out of, or justly attributed to, his traffic in intoxicating drinks; said damages and expenses to be recovered in any court of competent jurisdiction by any civil action on the bond named and required in section 6 of this act, a copy of which, properly authenticated, shall be taken in evidence in any court of justice in this state; and it shall be the duty of the proper clerk to deliver, on demand, such copy to any person who may claim to be injured by such traffic.

**Sec. 16. [Suit by married woman.]**—It shall be lawful for any married woman, or any other person at her request, to institute and maintain, in her own name, a suit on any such bond for all damages sustained by herself and children on account of such traffic, and the money when collected shall be paid over for the use of herself and children.

**Sec. 17. [Maintenance of intemperate paupers.]**—When any person shall become a county or city charge by reason of intemperance, a suit may be instituted by the proper authorities on the bond of any person licensed under this act, who may have been in the habit of selling or giving intoxicating liquors to the person so becoming a public charge; *Provided*, That the person against

whom a judgment may be rendered under the provisions hereof, may recover by a similar action a proportionate part of said judgment from any and all persons engaged in said traffic, who have sold or given liquor to such person becoming a public charge, or to any person committing an offense.

**SEC. 18. [Trial—Evidence.]**—On the trial of any suit under the provisions hereof, the cause or foundation of which shall be the acts done or injuries inflicted by a person under the influence of liquor, it shall only be necessary to sustain the action to prove that the defendant or defendants sold or gave liquor to the person so intoxicated, or under the influence of liquor, whose acts or injuries are complained of, on that day or about that time when said acts were committed or said injuries received; and in an action for damages brought by a married woman, or other person whose support legally devolves upon a person disqualified by intemperance from earning the same, it shall only be necessary to prove that the defendant has given or sold intoxicating drinks to such person during the period of such disqualification.

**SEC. 19. [Suits—Jurisdiction.]**—All suits for damages and expenses arising under this act may be commenced and prosecuted before a justice of the peace, where the damages claimed do not exceed the jurisdiction of said justice, although the penalty in the bond may exceed that amount, and the judgment shall be for the damages proved.

**SEC. 23. [Fines—Payments—Complaining witness.]**—All fines and penalties recovered under the provisions of this act shall, when collected, be paid into the proper treasury for the use of the school fund, and the corporate authorities by whom such license was issued shall pay to the complaining witness in such action, out of the general fund of the county or city, an amount equal to one-fourth of the sum actually collected and paid over to the school fund as aforesaid.

**SEC. 24. [Druggists.]**—The county board, under the restrictions contained in section one (1) of this act, may grant permits to druggists to sell liquors for medicinal, mechanical and chemical purposes upon a compliance with all the provisions hereinbefore contained, and subject to all the requirements and penalties contained in this act, except that no license fee shall be required except the cost of issuing said permit.

**SEC. 25. [License in cities.]**—The corporate authorities of all cities and villages shall have power to license, regulate and prohibit the selling or giving away of any intoxicating, malt, spirituous and vinous, mixed or fermented liquors within the limits of such city or village, the license not to extend beyond the municipal year in which it shall be granted, and to determine the amount to be paid for such license, not less than five hundred (\$500) dollars in villages and cities having not more than 10,000 population, nor less than one thousand (\$1,000) dollars in cities of the first class, and cities, having over 10,000 population; *Provided*, That the city council in cities, or board of trustees in villages, may grant permits to druggists for the sale of liquors for medicinal, mechanical and chemical purposes only, subject to forfeiture, and under such restrictions and regulations as may be provided by ordinance, and subject to the provisions of section 26 of this act: *Provided further*, That in granting licenses or permits such corporate authorities shall comply with and be governed by all the provisions of this act in regard to granting of licenses, and all the provisions and penalties contained in this act shall be applicable to such licenses and the persons to whom they are granted: *Provided, also*, That in granting any license the petition therefor shall be sufficient if signed by thirty of the resident freeholders, or if there are less than sixty, a majority of the freeholders of the ward or village where the sale of such liquors is to take place.

**SEC. 26. [Druggist's register—Penalty.]**—Any druggist to whom a permit may be granted, as contemplated in sections 24 and 25 of this act, shall keep in a book, provided by him for that purpose, a register of all liquors sold or given away by him, which register shall show the dates, kind, quantity, for what purpose and to whom such liquor was sold or given away, which book shall be at all

NOTE.—There are no sections numbered 20, 21 and 22 in the original act.

times open to the inspection of the public; all druggists to whom such permit may be granted shall on the first Monday of January and July of each year file in the office of the clerk of the authorities granting such permits, a report of all entries made in said register as contemplated in this section since his last report, which report shall be subscribed and sworn to as correct by said druggist, and that he has not sold or given away either by himself, clerk or agent, any liquors other than as stated in said report. Any druggist failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, for each and every offense shall be fined in any sum not less than twenty dollars (\$20), nor more than one hundred (\$100) dollars and be imprisoned in the county jail not less than ten days nor more than thirty days in the discretion of the court.

**SEC. 27. [False statements.]**—If any one purchasing intoxicating liquors of a person authorized to sell, shall make to such person any false statement regarding the use to which such liquor is intended by the purchaser to be applied, such person so obtaining such liquor shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, forfeit and pay a fine of ten dollars, together with costs of prosecution, or shall stand committed until the same is paid. For the second offense he shall pay a fine of twenty dollars and costs of prosecution, and be imprisoned in the county jail not less than ten days, nor more than thirty days.

**SEC. 28. [Intoxication—Punishment.]**—If any person shall be found in a state of intoxication he shall be deemed guilty of a misdemeanor, and any peace officer may, without warrant, and it is hereby made his duty to take such person into custody, and to detain him in some suitable place till an information can be made before a magistrate and a warrant issued in due form, upon which he may be arrested and tried, and, if found guilty, he shall pay a fine of ten dollars and the costs of prosecution, or shall be imprisoned in the county jail not more than thirty days. But the magistrate before whom such person is tried and convicted may remit any portion of such penalty, and order the prisoner to be discharged upon his giving information under oath, stating when, where and of whom he purchased or received the liquor which produced the intoxication, and the name and character of the liquor obtained. In cases arising under this section appeals may be allowed as in cases of ordinary misdemeanor within the jurisdiction of the justices of the peace.

**SEC. 29. [Saloons open to view.]**—It shall be the duty of all vendors of malt, spirituous, or vinous liquors, under the provisions of this act, to keep the windows and doors of their respective places of business unobstructed by screens, blinds, paint, or other articles, and any person offending against the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than \$25, or be imprisoned in the county jail not less than ten days, or both, at the discretion of the court, and shall have his license revoked by the same authority granting the same.

**SEC. 30. [Acts repealed.]**—That chapter 58 of the code of criminal procedure of the general statutes 1873, entitled, "License and sale of liquors," and an act entitled "An act to amend section 575 of chapter 58 of the criminal code," approved February 9, 1875, and an act entitled "An act to regulate the issuance of license for, and the sale of malt, vinous, and spirituous liquors in the state of Nebraska," approved February 25, 1875, be and the same are hereby repealed.

#### TREATING IN SALOONS.

**SEC. 31. [Treating in public place.]**—All persons are prohibited from treating or giving away any liquor, beer, wine or intoxicating beverage whatever, purchased and to be drank in any saloon, or other public place where such liquors or beverages are kept for sale. [1881 § 1, chap. 62.]

**SEC. 32. [Same—Penalty.]**—Any person treating of [or] offering to treat any other person, or accepting, or offering to accept any treat or gift of any intox-

SECS. 31-2. "An act to prevent treating in saloons and other public places." Approved Feb. 28. Took effect June 1, 1881.

icating drink whatever in any saloon or public place where such liquors are kept for sale, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be subject to a fine of ten dollars, or imprisonment in the common jail of the county for ten days, or both at the discretion of the court; and in addition thereto shall pay into said court the sum of fifteen dollars, to be paid to the attorney prosecuting the case if there be one; and if no attorney prosecutes, then to be paid in the school fund of the county in addition to the fine. [Id. § 2.]

SEC. 83. [**Sale of liquors prohibited in certain cases.**].—That no person shall sell, or expose for sale, give, barter, or otherwise dispose of, in any way or at any place, any spirituous or other liquors, or any article of traffic whatever, at or within the distance of three miles from the place where any religious society or assemblage of people are collected or collecting together for religious worship in any field or woodland; *Provided*, That nothing in this act shall effect tavern keepers from exercising their calling, nor distillers, manufacturers, or others in prosecuting their regular trades, at their places of business, or any persons disposing of any ordinary articles of provisions, excepting spirituous liquors, at their residences, nor any person having written permit from the trustees or managers of any such religious society or assemblage, to sell provisions for the supply of persons attending such religious worship, their horses or cattle, such persons acting in conformity to the regulations of said religious assembly and to the laws of the state. [1877 § 1, 6.]

SEC. 84. [**Penalty.**].—That any person found guilty of committing a breach of the provisions of this act shall forfeit and pay for every such offense, a fine of not less than twenty nor more than one hundred dollars, into the county treasury of the county within which such offense is committed, for the use of the common schools in said county, and any county judge, sheriff, coroner, or justice of the peace, shall, upon view or information and with or without warrant, apprehend any person or persons so offending, and seize all such liquors or other articles of traffic, and the utensils or furniture containing them, and convey them before a justice of the peace or the county judge within the county in which such crime or offense may be committed, and the said county judge or justice of the peace upon complaint, under oath or affirmation of said officer apprehending such offender or any person giving information, shall issue his warrant of arrest, which shall be formally served by the proper officer, and proceed to enquire into the truth of said accusation, and, if found true, shall proceed to bind said offender or offenders in an amount not exceeding five hundred dollars, as he shall deem proper, to answer at the next regular term of the district court, in and for the county in which such offense shall have been committed, to be proceeded with by indictment, the fine and costs to be allotted as in other criminal cases; *Provided, however*, That if such offender or offenders shall plead guilty, said judge or justice shall affix the penalty and proceed to judgment, and in such case he shall immediately issue execution against the property and body of the defendant or defendants for the fine and costs unless paid or secured; and said defendant or defendants shall not be discharged until said judgment shall be fully paid or secured to be paid. [Id. § 2.]

SEC. 85. [**Costs—Defendant may recover from prosecutor.**].—That in any prosecution against any person or persons for a violation of the provisions of this act, if the defendant or defendants shall be acquitted, he or they shall recover of the person or persons filing the complaint double the amount of his or their costs which said county judge or justice shall award. [Id. § 3.]

#### CHAPTER 51.—MARKS AND BRANDS.\*

SECTION 1. [**Record.**].—Every person having cattle, hogs, and sheep, shall have a mark or brand, different from the mark or brand of his neighbors, and he

SECS. 33-5. "An act for the prevention of certain immoral practices." Laws 1877, 6. Took effect June 1, 1877.

\*NOTE.—Chap. XXXIII. R. S. 253. Chap. 39, G. S. 461. Whether this chapter is repealed by the act of 1879, 137, *quære*.

shall deliver to the county clerk a description of his mark or brand, and such clerk shall record the same in a well bound book kept by him for that purpose.

**SEC. 2. [Duplicate brands.]**—No person shall have or adopt a mark or brand previously recorded to another person of the same county, neither shall the county clerk record the same mark or brand to more than one person.

**SEC. 3. [Single brands.]**—No person shall use more than one mark or brand for his stock, nor use any other than the one recorded.

**SEC. 4. [Animals to be branded—Record—Evidence.]**—Every person shall mark or brand all his hogs or sheep over six months old, and his cattle over twelve months old, and if any dispute arise about the question of whose any mark or brand may be, the same shall be decided by the record of the county clerk.

**SEC. 5. [Recording duplicate brands—Penalty.]**—If any person shall wilfully and knowingly have a mark or brand recorded, which is already recorded to another person in the same county, he shall be fined not less than twenty dollars nor more than one hundred dollars.

**SEC. 6. [Same—Clerk—Penalty.]**—If any county clerk shall record the same mark or brand to more than one person, he shall forfeit and pay, to the use of the county, a fine not exceeding one hundred dollars.

**SEC. 7. [Misbranding another's stock—Penalty.]**—Every person who shall wilfully and with intent to defraud, misbrand, or mismark any stock not his own, shall forfeit and pay for every such offense not less than twenty dollars nor exceeding one hundred dollars.

**SEC. 8. [Altering another's brand—Penalty.]**—If any person alter or deface the mark or brand of any other person, for every head of stock whose mark or brand shall be thus altered or defaced, he shall forfeit not exceeding one hundred dollars.

#### ACT OF 1879.

**SEC. 9. [Stock brands—Adoption.]**—Any person having cattle, hogs, sheep, horses, mules, or asses, shall have the right to adopt a brand or ear-mark, for the use of which he shall have the exclusive right in the county in which such ear-mark or brand is recorded. [1879 § 1, 157.]

**SEC. 10. [Duplicate brands.]**—No person shall have or adopt a mark or brand previously recorded to another person of the same county, neither shall the county clerk record the same mark or brand to more than one person. [Id. § 2.]

**SEC. 11. [Certificate—Record.]**—Any person desiring to use any brand or ear-mark, shall make and sign a certificate setting forth a fac-simile and description of the brand and ear mark which he desires to use, and shall file the same for record in the office of the county clerk of said county in which he resides. And any person so desiring may, in the manner, and with like effect as herein provided, record his brand or marks in any county in this state into which his stock is liable to stray; *Provided*, That such mark or brand has not been heretofore recorded in such county by some other person. [Id. § 3.]

**SEC. 12. [Conflicting brands—Committee.]**—The authority of deciding whether a brand or mark offered for record does or does not conflict with any previously recorded brand or marks, shall be vested in a committee of three, consisting of the county clerk and two respectable stock owners of the county. The two stock owners shall be appointed by the county commissioners, they shall be men of good judgment and experience in brands, and when practicable shall be chosen from those largely interested in cattle. Vacancies occurring in the membership, other than the county clerk, shall be filled by the county commissioners. All brands offered for record shall be submitted before acceptance to this committee. The objection of any two shall reject a brand, It shall be the duty of the county clerk to file all brands offered for record pending the examination, which he shall

SEC. 8. See sec. 63 Criminal Code.

SECS. 9-16. "An act relating to the use of marks and brands on live stock" Laws 1879, 157. Took effect June 1, 1879.

cause to be made as promptly as possible, and if the brand is accepted, the ownership shall date from the date of filing. [Id. § 4.]

**SEC. 13. [Same—How decided.]**—It shall be the duty of the county commissioners immediately after the passage of this act, to make the appointment above specified, one of whom shall serve till the first day of January following, another until the first day of January the next succeeding year, the county commissioners appointing a member to serve for two years at their first meeting in the month of January in each year. After this shall have been done the county clerk shall at once call together the committee; they shall examine the present record of brands, and in any case where, in the judgment of two of them, a brand is found which conflicts with one previously recorded, or which might in its use endanger the property of the party owning the brand earliest of record, it shall be the duty of the county clerk to notify the party owning said brand last of record that the further use of the same will be illegal to the same extent as though it had never been recorded, unless previously agreed upon by owners of such brands, and a joint statement be presented to the recorder of brands by such brand-owners; the said notice shall be given by letter, when possible, and also, and in all cases by publication for one month in two papers of general circulation in the county, the expense of which shall be paid on a proper voucher by the county commissioners; both forms of notice shall be given immediately after said examination and rejection. It is expressly provided that this enactment shall not in any way affect or invalidate the ownership of animals which were branded with said brand then registered previous to the examination and rejection, the object of this act being to make illegal and enjoin from the further use of said brand. The date of the last publication shall be considered to be the date of rejection. [Id. § 5.]

**SEC. 14. [Incoming stock growers.]**—It shall be the duty of any person who, after the passage of this act, brings into any county of this state, and turns loose for grazing purposes any herd, brand, or individual animals already branded, to lay before the above committee a statement of the brands of said animals, and if in the judgment of any two of them said brands conflict with any previously recorded in that county, it shall be the duty of the owner or manager of said animals to brand them with a brand that the committee shall consider a full and distinguishing mark from all brands there recorded, but the owner shall be enjoined from any further use of the conflicting brand. A failure to comply with the above shall render the party so failing liable for all damages resulting from such failure, which damages may be recovered in a civil suit. It is further provided that this section shall apply to all animals now in any county in this state whose brands are considered by this committee to infringe on previously recorded ones. [Id. § 6.]

**SEC. 15. [Brands to be rejected by committee.]**—In deciding as to the conflict of brands, the committee will reject any one that, being the same as one previously recorded, has in addition any of the following, whether placed across, above, below, at either side or encircling the main brand, viz.: a straight bar, a quarter, half, or entire circle, a quarter, half, or entire diamond, either upright or inverted, the same not constituting a true brand, and rendering the owner of the same brand liable to damage by its use, saving only when one or more of these shall be filed by the owner of the first record of the main brand, in which case it may be accepted. The committee shall reject any brand formed by repetition of any letter, number or figure which shall have been previously recorded, whether to be placed on the same or on a different part of the animal; the exclusive right of the first record to the letter, number, or figure, and to repetition of it being reaffirmed. They shall also reject all brands known as solid brands, and all ear-marks which shall remove to exceed one-half of the ear. A variation in the size of a letter, number, or figure, shall not constitute a new brand, and shall be rejected. A combination of letters, numbers, or figures, may be permitted though the same letters, numbers, or figures, may have been recorded singly or together, if, in the judgment of the whole committee, said

combination is so different from any previous record as to constitute a new brand, with no danger of infringement; but in this case the objection of one member shall reject. [Id. § 7.]

SEC. 16. [**Brand, evidence of ownership.**].—In all suits in law, or in equity, or in any criminal proceedings, when the title to any stock is involved, the brand on any animal shall be *prima facie* evidence of the ownership of the person whose brand it may be; *Provided*, That such brand has been duly recorded as provided by law. Proof of the right of any person to use such brand shall be made by a copy of the record of the same, certified by the county clerk of that county or of any county in which the same is recorded under the hand and seal of office of such clerk. [Id. § 8.]

## CHAPTER 52.—MARRIAGE.

SECTION 1. [**Civil contract—Consent.**].—In law, marriage is considered a civil contract, to which the consent of parties capable of contracting is essential.

SEC. 2. [**Age of parties.**].—At the time of the marriage the male must be of the age of eighteen years or upwards, and the female of the age of sixteen years or upwards.

SEC. 3. [**Void marriages.**].—Marriages are void—*First*. When one party is a white person and the other is possessed of one-fourth or more negro blood. *Second*. When either party has a husband or wife living at the time of marriage. *Third*. When either party is insane or an idiot, at the time of marriage. *Fourth*. When the parties stand to the relation of each other of parents and children, grandparents and grandchildren, brother and sister, of half as well as whole blood, uncle and niece, aunt and nephew; and this subdivision extends to illegitimate as well as legitimate children and relatives.

SEC. 4. [**License.**].—Previous to the solemnization of any marriage in this state, a license for that purpose must be obtained from the probate judge of the county wherein the marriage is to take place.

SEC. 5. [**Minors—Consent of parent.**].—When either party is a minor, no license shall be granted without the verbal consent, if present, or written consent, if absent, of the father, if living, if not, then of the mother, of such minor, or of the guardian or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness.

SEC. 6. [**License—Contents.**].—When application shall be made for a license to the probate judge he shall upon the granting of such license state therein the christian and surnames of the fathers of both parties, the christian and maiden names of the mothers of both parties, the christian and surnames of the parties, the residence of both parties, their places of birth, their respective ages, their color, which license shall, prior to the issuing thereof, be entered of record, in the office of the probate judge, in a suitable book to be provided for that purpose. [Amended 1869, 167.]

SEC. 7. [**Same—Refused.**].—If, on such testimony being given, it shall appear that either of the parties is legally incompetent to enter into such contract, or that there is any impediment in the way, or, if either party is a minor, and the consent mentioned in section five shall not be given, the said judge shall refuse to grant a license.

SEC. 8. [**Ceremony by whom—Report.**].—Every judge and justice of the peace, and every preacher of the gospel, authorized by the usages of the church to which he belongs, to solemnize marriages, may perform the marriage ceremony in this state; and every such person performing the marriage ceremony shall enter upon the said license, a full return of his proceedings in the premises, which return shall be made to the probate judge of the proper county, within three months after such marriage ceremony has been performed, and which return the

said probate judge shall record or cause to be recorded in the same book where the said marriage license is recorded. [Amended 1869, 168.]

SEC. 9. [**Ceremony required.**].—In the solemnization of marriage no particular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate or minister, and the attending witnesses, that they take each other as husband and wife; and in any case there shall be at least two witnesses, besides the minister or magistrate, present at the ceremony.

SEC. 10. [**Certificate.**].—Whenever a marriage shall have been solemnized, pursuant to the provisions of this chapter, the minister or magistrate who solemnized the same, shall give to each of the parties, on request, a certificate, under his hand, specifying the names, ages, and places of residence of the parties married, the names and residence of at least two witnesses who were present at such marriage, and the time and place thereof.

SEC. 11. [**Report to probate judge.**].—Every person having authority to join others in marriage, shall, within three months after the solemnization of any such marriage, make and deliver to the probate judge of the county in which the marriage took place, a certificate containing the particulars mentioned in the preceding section.

SEC. 12. [**Record by probate judge.**].—The probate judge of each county in the state shall record all such returns of such marriages in a book to be kept for that purpose, within one month after receiving the same.

SEC. 13. [**Violation of act—Penalty.**].—If any justice, minister or other person whose duty it is to make and transmit to the probate judge such certificate, shall neglect to make and deliver the same; or if the probate judge shall neglect to record such certificate; or if any person shall undertake to join others in marriage, knowing that he is not legally authorized so to do, or knowing of any legal impediment to the proposed marriage; or if any person authorized to solemnize any marriage, shall wilfully and knowingly make a false certificate of any marriage to the probate judge; or if the said probate judge shall wilfully and knowingly make a false record of any certificate of marriage to him made; he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or imprisonment for a period not exceeding one year, at the discretion of the court.

SEC. 14. [**Marriage improperly solemnized.**].—No marriage solemnized before any person professing to be a justice of the peace, or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority in such supposed justice or minister; *Provided*, The marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

SEC. 15. [**Religious rites.**].—It shall be lawful for every religious society to join together in marriage such persons as are of the said society, according to the rites and customs of such society, to which they belong; the clerk or keeper of the minutes, proceedings, or other book of the religious society wherein such marriage shall be had, or if there be no such clerk or keeper of the minutes, then the moderator or person presiding in such society, shall make out and transmit to the probate judge of the county, a certificate of the marriage, and the same shall be recorded in like manner as is provided in the preceding section of this chapter.

SEC. 16. [**Evidence—Certificate.**].—The original certificate and record of marriage made by the minister, officer or person, as prescribed in this chapter, and the record thereof, made as prescribed, or a copy of such record, duly certified by such officer, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

SEC. 17. [**Foreign marriages.**].—All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state.



## CHAPTER 53.—MARRIED WOMEN.\*

**SECTION 1. [Separate property.]**—The property, real and personal, which any woman in this state may own at the time of her marriage, and the rents, issues, profits, or proceeds thereof, and any real, personal, or mixed property, which shall come to her by descent, devise or the gift of any person except her husband, or which she shall acquire by purchase or otherwise, shall remain her sole and separate property, notwithstanding her marriage, and shall not be subject to the disposal of her husband, or liable for his debts. [Amended 1875, 88.]

**SEC. 2. [Same—Conveyance—Contracts.]**—A married woman, while the marriage relation subsists may bargain, sell and convey her real and personal property, and enter into any contract with reference to the same in the same manner, to the same extent, and with like effect as a married man may in relation to his real and personal property.

**SEC. 3. [Suits.]**—A woman may, while married, sue and be sued, in the same manner as if she were unmarried.

**SEC. 4. [Trade—Business.]**—Any married woman may carry on trade or business, and perform any labor or services on her sole and separate account; and the earnings of any married woman, from her trade, business, labor, or services, shall be her sole and separate property, and may be used and invested by her, in her own name.

**SEC. 5. [Extra-state acquired rights.]**—Any woman who shall have been married out of this state shall, if her husband afterwards becomes a resident of this state, enjoy all the rights as to property which she may have acquired by the laws of any other state, territory, or country, or which she may have acquired by virtue of any marriage contract or settlement made out of this state.

**SEC. 6. [Marriage settlements.]**—Nothing in this act contained shall invalidate any marriage settlement or contract now made, or to be made hereafter.

**SEC. 7. [Ante-nuptial debts.]**—The property of the husband shall not be liable for any debts contracted by the wife before marriage. [1877 § 1, 93.]

## CHAPTER 54.—MECHANICS' AND LABORERS' LIENS.†

## ARTICLE I.—MECHANICS' LIEN.

**SECTION 1. [Who entitled to liens.]**—Any persons who shall perform any labor, or furnish any material or machinery or fixtures for the erection, reparation or removal of any house, mill, manufactory, or building or appurtenance by virtue of a contract or agreement expressed or implied with the owner thereof or his agents, shall have a lien to secure the payment of the same upon such house, mill, manufactory, building or appurtenance, and the lot of land upon which the same shall stand. [1881 § 1, chap. 59.]

**SEC. 2. [How secured—Payment by owner.]**—Any person or sub-contractor who shall perform any labor for or furnish any material or machinery or fixtures for any of the purposes mentioned in the first section of this act, to the contractor or any sub-contractor who shall desire to secure a lien upon any of the structures mentioned in said section, may file a sworn statement of the amount due him or them from such contractor or sub-contractor for such labor or material, machinery or fixtures, together with a description of the land upon

\*NOTE.—"An act respecting the rights of married women." Laws 1871, 68. G. S. 465. Took effect June 1, 1871.

SEC. 7. "An act to exempt the property of the husband, from liability of the debts contracted by the wife before marriage." Laws 1877, 33. Took effect June 1, 1877.

Decisions under this act and rights and liabilities of husband and wife. 3 Neb. 452. 4 Id. 170, 316. 5 Id. 246. 6 Id. 265, 377. 7 Id. 486. 8 Id. 269, 327, 329, 360, 525. 9 Id. 25, 52, 427. 10 Id. 86, 311, 448.

†NOTE.—"An act to amend chapter 42 of the General Statutes of Nebraska entitled Mechanics' Liens." Approved Feb. 28. Took effect June 1, 1881. A party who does not follow the directions of the law has no lien on the premises entitling him to redeem a mortgage nor any interest therein by reason of his recovery of judgment against the mortgagor after foreclosure and sale. 1 Neb. 427. The law does not apply to buildings erected by the state for public use. 2 Neb. 6. Nor to county buildings. 3 Neb. 404. The lien is assignable and the assignee may foreclose. 4 Neb. 59. The lien may be enforced against separate estate of wife where the husband, acting as agent for his wife, purchased the materials. 3 Neb. 452.

which the same were done or used, within sixty days from the performing of such labor or furnishing such material, machinery or fixtures, with the county clerk of the county wherein said land is situated, and if the contractor does not pay such person or sub-contractor for the same, such sub-contractor or person shall have a lien for the amount due for such labor or material, machinery and fixtures, on such lot or lots and the improvements thereon, from the same time and in the same manner as such original contractor, and the risk of all payments made to the original contractor shall be upon the owner until the expiration of the sixty days hereintoforespecified. And no owner shall be liable to any action by the contractor until the expiration of said sixty days, and such owner may pay such sub-contractor or person the amount due him from such contractor for such labor and material, machinery and fixtures, and the amount so paid shall be held and deemed a payment of such amount to the original contractor. And in cases when a dispute arises between the contractor and his journeyman, or other persons for work done or material furnished, the owner may retain the amount claimed by said sub-contractor, or journeyman, or laborer until the dispute has been settled by arbitration or otherwise. Said sworn statement and claim of lien shall be by such county clerk recorded in the same manner as other liens provided for by this chapter, and such lien shall remain in force for the same length of time as other liens provided for in this chapter.

**SEC. 3. [Proceedings to secure.]**—Any person entitled to a lien under this chapter shall make an account in writing of the items of labor, skill, machinery, or material furnished, or either of them as the case may be, and after making oath thereto shall within four months of the time of performing such labor and skill, or furnishing such machinery or material, file the same in the county clerk's office of the county of which such labor, skill, and materials shall have been furnished, which account so made and filed shall be recorded in a separate book to be provided by the clerk for that purpose, and shall from the commencement of such labor or the furnishing such materials for two (2) years after the filing of such lien operate as a lien on the several descriptions of such structures and buildings and the lots on which they stand, as in the first section of this chapter named. When any labor has been done or materials furnished as provided on a written contract, the same or a copy thereof shall be filed with the account herein required. And if any promissory note shall have been taken for any such labor or materials it shall be sufficient to secure the lien provided for in sections one and two hereof, to file in the office of the county clerk a copy of such note within the time aforesaid, together with a sworn statement that the sum for which said note was given, or any part thereof, is due for labor and material used for the purpose hereinbefore mentioned, giving in such statement the items of such labor and material, and such lien shall be for the amount so shown to be due for such labor and material, with interest at the rate specified in said note; *Provided*, Nothing herein contained shall be taken to prevent the ascertainment by proceedings at law, or otherwise, of the amount actually due for such labor and material, and such lien shall be for no larger sum than the amount actually due therefor.

**SEC. 4. [Judgment on account.]**—Every person holding any lien under this chapter may proceed to obtain a judgment for the amount of his account thereon by civil action. And when any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit be finally determined and satisfied.

**SEC. 5. [Completion of building by workmen.]**—When the owner or owners of any house or building, or his or their agent, as described in this chapter, shall suspend its progress or completion without the consent of such laborers, mechanics, or furnishers, or if the progress or completion of the same be suspended by the decease of the owner or owners at a stage when from its unfinished state such structure would go to waste, the laborers, mechanics, and furnishers thereto, or any of them, may at their election, proceed with the same

at their own cost, so far as to enclose such building, and thereby prevent such waste, provided such work so done after such suspension shall be according to the contract and plan of the owner or owners.

**SEC. 6. [Defective title—Lease.]**—If the person or persons who may erect as owner or owners, any building described in first section of this chapter be not, at the suspension or completion of the same, possessed of a legal but equitable title to the ground on which the same is erected (if the same be a fixture), and the fact of such defect of title be made to appear to the court before any judgment or judgments under this chapter may have been obtained, or if the same be returned by any legal officer to whom any execution under this chapter shall be directed, in either case the court shall direct the officer who has returned or is authorized by law to serve such executions, to rent or lease such buildings until the rents or issues thereof shall pay and satisfy the several liens on which judgments may be had against the same; *Provided*, This law shall not be so construed as to interfere with prior *bona fide* liens, on grounds on which such buildings shall be erected as a fixture.

**SEC. 7. [Lease of premises by order of court.]**—In all other cases of judgment or judgments obtained in favor of any lien holder or lien holders, if the property bound by such lien will not sell on execution as provided by law in other cases, having been once duly offered, the court before whom such judgment or judgments may be obtained, may direct the officer aforesaid to lease the same in the same manner and for the same purpose pointed out in the preceding section, and the officer giving such lease shall therein require the payment to be made to him or his successors in office, which said successor or successors shall have the same power and perform the same duties therein as the maker of the lease should or could do, and in cases where the money may be collected by said officer on a lease made, it, under this chapter, shall be his duty to forthwith pay the same into the court where the judgment or judgments were obtained, which money shall be distributed to the several lien holders interested in said judgment, in proportion to their several demands.

**SEC. 8. [Lien how discharged.]**—All liens may be discharged by the payment of debt or judgment with all legal costs before the property on which liens attach be sold or leased under this chapter, and if any lien holder or lien holders, after the same be duly tendered him or them, shall proceed at law or shall refuse to give a due discharge from such lien, then such lien holder or holders shall forfeit all liens and pay all cost.

**SEC. 9. [Owner beyond process.]**—If the owner or owners of the property which is subject to a lien under this chapter be without the reach of process, or resident without the state, any lien holders may proceed by attachment against the same as in other cases, and the court before whom such attachment is pending on the entry of judgment on return of the proper officer, shall have the same power to order a lease as is given in the seventh (7) and eighth (8) sections of this chapter.

**SEC. 10. [Rights of executors.]**—Executors and administrators under this chapter shall have the same rights and be subject to the same liabilities that their testators or intestate would or might have if living.

**SEC. 11. [Fees of county clerk.]**—The county clerks, for filing and recording contracts and accounts under this chapter, shall be paid the same fees that they are legally entitled to in other cases, and the cost of filing and recording such statement or contracts and accounts shall be recovered as part of the costs of enforcing the lien, unless the court shall otherwise order.

**SEC. 12. [Release of lien—Penalty.]**—Each and every person in favor of whom any such lien has existed after having received satisfaction of his debt, or after final judgment against him by a competent tribunal, showing that nothing is due by reason of such claims, shall at the request of any person interested in

SEC. 7. If a party is prevented from making the account by the wrongful act of the one for whom the labor is performed, he will not lose his lien. 3 Neb. 451.

the property on which the same was a lien, or who is interested in having the lien removed, or if his or their legal representatives, lodge a certificate with said clerk, that said debt is satisfied, and said lien removed, which said certificate shall be filed and recorded by the clerk on the margin of the record in the same manner that releases of mortgages are now by law required to be recorded, and when so recorded shall forever discharge and release said lien, and if such person having received such satisfaction as aforesaid, by himself or attorney, or judgment having been rendered against him as aforesaid, shall not within ten days after request in writing, lodge a notice in writing with the clerk, as is prescribed in this section, he or they neglecting or refusing to do so shall forfeit and pay to the party or parties so agreed, any sum of money not exceeding one-half the debt claimed as a lien on such property according to the circumstances of the case, to be recovered by civil action, and the party lodging such certificate, shall pay to the county clerk the costs of filing and recording the same.

**SEC. 13. [Insurance].**—Any lien holder under this chapter who may deem himself in danger of loss or damage by fire, may notify in writing the owner or agent of property subject to such lien to insure the same in reasonable amount against such loss or damage, and if he shall fail or refuse to do so for the space of ten days, then the person or persons having such lien or liens may insure such property in an amount not to exceed two-thirds of the total amount of their liens, and may recover such proportion of the premium paid therefor, as the court shall deem just and proper as part of the costs of enforcing such lien.

**SEC. 14. [Remedy not exclusive].**—Any person who shall hold a lien under the provisions of this chapter may, in addition to the remedy herein provided for, proceed by a petition in chancery as in other cases of liens against the owner or owners of, and all other persons interested, either as lien holders or otherwise, in any such house, mill, or manufactory, or other building or appurtenance, in the first section of this chapter mentioned, and the lot or lots of land, on which the same shall stand, and obtain such final decree therein for the rent or sale thereof, as justice and equity may require, anything in this chapter to the contrary notwithstanding.

**SEC. 15. [Repealed chap. 42, G. S. 466, and all other acts and parts of acts in conflict with this act.]**

#### ARTICLE II.—LABORERS' LIEN.\*

**SECTION 1. [Liability of company—Notice of claim.]**—That whenever any laborer upon any railroad, canal, viaduct, bridge, ditch, or other similar improvement in this state, shall have just claim or demand for labor performed on any such railroad, canal, bridge, ditch, viaduct, or other similar improvement against any person or persons who are or any company which is a contractor on such railroad, canal, viaduct, or bridge, or against any person or persons who are sub-contractors with any person or persons or company contracting with any such railroad, bridge, viaduct or ditching company for the construction of any part of such railroad, bridge, canal, viaduct or ditch of any such company, every such railroad, canal, bridge or ditch company shall be liable to pay such laborer the amount of such claim or demand with ten per cent. interest thereon; *Provided*, Such laborer shall have given notice within sixty days after the last item of labor shall have been performed, that he or she has such claim or demand. Such notice shall be given in writing and shall specify the peculiar nature and amount of the claim or demand, and shall be delivered to the president or vice president, super-

SEC. 14. In an action to foreclose a lien it being alleged that M. out of material furnished by plaintiff erected the building on a lot belonging to L., held by M. under lease, where no summons was served on M., held the court had no jurisdiction to render a judgment against L. & M. and ordering a sale of the premises. 9 Neb. 536. A person who has sold his interest in the premises is not a necessary party to the foreclosure. 3 Neb. 450.

\*NOTE.—"An act to make railroad, canal, bridge and ditching companies, and companies and persons responsible for material furnished and labor performed in the construction, repair or improvement of any such works, and to secure the laborer and material man a lien for his material furnished and labor performed." Approved Mar. 3. Took effect June 1, 1881.

intendent, agent or the managing director or chief engineer, of any such company, or to the engineer in charge of that portion of the work, or any portion of the railroad, canal, viaduct, bridge or ditch upon which such labor is performed. 1881 § 1, chap. 60.]

**SEC. 2. [Lien.]**—And when material shall have been furnished, or labor performed in the construction, repair and equipment of any railroad, canal, bridge, viaduct or other similar improvement, such labor and material man contractor or sub-contractor shall have a lien therefor, and the said lien therefor shall extend and attach to the erections, excavations, embankments, bridges, road bed, and all land upon which the same may be situated, including the rolling stock thereto appertaining and belonging, all of which including the right of way, shall constitute the excavation, erection or improvement provided for and mentioned in this act.

**SEC. 8. [Statement of claim—Filing—Continuance of lien.]**—Every person, whether contractor or sub-contractor, or laborer or material man who wishes to avail himself of the provisions of the foregoing section, shall file with the clerk of the county in which the building, erection, excavation, or other similar improvement, to be charged with the lien is situated, a just and true statement or account of the demand due him after allowing all credits, setting forth the time when such material was furnished or labor performed, and when completed, and containing a correct description of the property to be charged with the lien and verified by affidavit, such verified statement or account must be filed by a principal contractor within ninety days, and by a sub-contractor within sixty days, from the date on which the last of the material shall have been furnished, or the last of the labor is performed; but a failure or omission to file the same within the periods last aforesaid, shall not defeat the lien, except against purchasers or incumbrances in good faith without notice, whose rights accrued after the thirty or ninety days, as the case may be, and before any claims for the lien was filed; *Provided*, That when a lien is claimed upon a railway, the sub-contractor shall have sixty days from the last day of the month in which said labor was done or material furnished, within which to file his claim therefor; and, *Provided further*, That when any such material is furnished or work done in any unorganized county in this state, such statement of the demand due, verified as aforesaid, may be filed in any county in this state into or through which any such railroad or canal may run, or in the organized counties lying next nearest east of the county where said work was done or material furnished. *Provided further*, That such lien shall continue for the period of two years, and that any person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action; and when any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit or suits be finally determined and satisfied.

## CHAPTER 55.—MEDICINE.

**SECTION 1. [Who may practice.]**—It shall be unlawful for any person to practice medicine, surgery or obstetrics or any of the branches thereof in this state without first having complied with the provisions of this act relating to registration, and no person practicing medicine, surgery or obstetrics, or any part of the branches thereof shall be entitled to registration unless possessed of the qualifications required by section four of this act. [1881 § 1, chap. 68.]

**SEC. 2. [Registration.]**—It shall be the duty of all persons claiming to be physicians, and intending to practice medicine, surgery or obstetrics in the state of Nebraska, before beginning the practice thereof in any branch thereof, to register as a physician by filing with the county clerk of the county in which he or she resides, or in which he or she intends to practice, a statement in writing under oath or affirmation giving his or her full name, age, place of birth, place of residence, place of business and the time he or she has practiced medicine, and when

NOTE.—"An act to regulate the practice of medicine in the state of Nebraska." Approved Mar. 3. Took effect June 1, 1881.

and where he or she has so practiced and the time of such practice in each place, and if he or she is or has been a member of any medical society or societies, the name and location of such society or societies, and if he or she is a graduate of any medical college or university, the date of his or her graduation, and the full and true name and location of such college, institution or university. Such statement shall be filed by the county clerk, and by him recorded in a book to be kept for that purpose to be called the "Physician's Register."

**SEC. 8. [False statements.]**—Whoever shall knowingly make any false statement or statements in the statement mentioned in section 2 of this act shall be deemed guilty of a felony, and upon conviction thereof shall be subject to the same penalties which attach to the crime of perjury under the laws of the state of Nebraska.

**SEC. 4. [Qualifications to register.]**—No person shall be entitled to registration as a physician or surgeon under the provisions of this act, or to practice medicine, surgery or obstetrics, or any branch thereof in this state, unless he or she shall be possessed of one of the qualifications named in this section as follows: *First.* A graduate of a legally chartered medical college or institution having authority to grant the degree of "Doctor of Medicine," or *Second.* A person who shall have, at the time this act takes effect, attended one full course of lectures in a legally chartered medical college or institution having authority to confer the degree of Doctor of Medicine and practiced medicine continuously for three years, the last one year of which practice shall have been in this state; or *Third.* A person who shall have been at the time of the taking effect of this act engaged in the practice of medicine, surgery or obstetrics for a livelihood for a period of ten years, the last two years of which practice has been in this state. *Provided,* That no person not a resident of this state at the time this act takes effect who has not received the degree of Doctor of Medicine from a legally chartered medical college or institution having authority to grant the same shall be admitted to registration under this act, or authorized to practice medicine, surgery or obstetrics in this state.

**SEC. 5. [Physician's register—Clerk's fees.]**—It shall be the duty of the county clerk in each county of this state to provide and keep in his said office as a public record, a book to be entitled "The Physician's Register," in which book the clerk shall record the statement named in section two of this act, and properly index the same, and for filing, recording and making transcripts of such statements, the clerk shall be entitled to the same fees as allowed by law for like services as to conveyances of real estate.

**SEC. 6. [Removal from county.]**—Any person who shall have filed the statement required by section two of this act, in one county, and shall remove to another county, shall, before entering upon the practice of his profession in such last named county, procure a certified copy of the record of his former registry, and cause such transcript to be filed and recorded in the "Physician's Register" of such county in which he has removed.

**SEC. 7. [Transcripts—Evidence.]**—Certified copies of the record of such statements or transcripts, shall be received in evidence in all courts instead of the original statement filed with the county clerk.

**SEC. 8. [Effect of act on suitors.]**—No person shall recover in any court in this state any sum of money whatever for any medical, surgical or obstetrical services unless he shall have complied with the provisions of this act relating to registration, and is one of the persons authorized by this act to be registered as a physician.

**SEC. 9. [Unregistered practitioner—Penalty.]**—Any person not possessing the qualifications for the practice of medicine, surgery or obstetrics required by the provisions of section four of this act, or any person who has not complied with the provisions of section two of this act as to registration, who shall engage in the practice of medicine, surgery or obstetrics, or any of the branches thereof in this state, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than twenty dollars, nor more than one

hundred dollars and costs of prosecution for each offense, and shall stand committed until such fine and costs are paid.

**SEC. 10. [Practitioner defined—Exceptions to act.]**—A person shall be regarded as practicing medicine within the meaning of this act who shall publicly profess to be a physician, surgeon or obstetrician, or prescribe for the sick. But nothing in this act shall be constructed to prohibit students from practicing under the supervision of a registered preceptor, or to prohibit gratuitous services in cases of emergency, and this act shall not apply to commissioned surgeons in the United States army and navy.

**SEC. 11. [Itinerant drug, etc., vendors—Penalty.]**—Any itinerant vendor who has not qualified as hereinbefore provided of any drug, nostrum, ointment or appliance of any kind intended for the treatment of any disease or injury, or who shall by writing, printing, or any other method, except by ordinary professional card or sign, publicly profess to cure or treat disease, injury or deformity, by any drug, or nostrum, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars, nor more than one hundred dollars, or be imprisoned in the county jail for a period of not less than thirty days, nor more than three months, or both in the discretion of the court, for each offense.

## CHAPTER 56.—MILITIA.

**SECTION 1. [Who liable to duty.]**—Every able-bodied male citizen of this state, between the ages of eighteen and forty-five years, not expressly exempted by law, and officers of the United States shall be subject to military duty and be designated as the militia. [1881 § 1, chap. 64.]

**SEC. 2. [When enrolled.]**—When it is necessary to execute the law, suppress insurrection, or repel invasion, or when a requisition is made by the president of the United States for troops, the governor as commander-in-chief, shall, by his proclamation, require the enrollment of the militia of the state, or such portion thereof as may be necessary, in the manner herein provided.

**SEC. 3. [Number—Enlistment.]**—The active militia shall be designated as the "Nebraska National Guards;" shall be recruited by volunteer enlistment; shall consist of not more than two thousand men, and shall be assigned to regiments and brigades by the commander-in-chief. All enlistments therein shall be for three years, and made by signing enlistment papers presented by the adjutant general and taking the following oath or affirmation, which may be administered by the enlisting officer or any commissioned officer of the rank of captain, to wit:

"You do solemnly swear (or affirm) that you will bear true allegiance to the United States and the state of Nebraska, and that you will support the constitutions thereof, and that you will serve the state of Nebraska faithfully in its military service for the term of three years unless sooner discharged, or you cease to become a citizen thereof, and that you will obey the orders of the commander-in-chief and such officers as may be placed over you, and the laws governing the military forces of Nebraska—So help me God."

**SEC. 4. [When liable to duty.]**—The Nebraska National Guards heretofore mentioned, shall be liable at all times to be ordered into active service, and shall be first called out by the commander-in-chief on all occasions for military service within the state, in time of war, invasion, riot, rebellion, or reasonable apprehension thereof; or upon requisition of the president of the United States, the commander-in-chief may order out for active service such further portion of the militia as he may deem necessary, or to comply with the requisition of the president of the United States, designating the same by draft, if a sufficient number shall not volunteer, and may organize the same in the manner therein provided for organizing the Nebraska National Guards and commissioned officers therefor, and when so ordered out for service the militia shall be subject to like

NOTE.—"An act to establish a military code for the state of Nebraska." Approved Feb. 28. Took effect June 1, 1881.

regulations and services from the state, like compensation as that prescribed for the army of the United States; *Provided*, that the Nebraska National Guards shall not be called into the service of the United States, but the members thereof are subject to be called into the service of the United States only in the manner herein provided for calling the militia into active service of the United States.

SEC. 5. [**Draft.**—In case of a draft the commander-in-chief shall apportion it equitably among the several counties, taking care that the said apportionment shall be equitably made among the several townships or precincts of the counties, in such manner as he may prescribe. He shall, in case of any such draft appoint a time and place of parade, and shall have such other and further power as may be necessary to carry into effect the provisions of this act relative to any such draft.

SEC. 6. [**Enrollment.**—The names of all male citizens of this state, between the ages of eighteen and forty-five years shall annually at the time of assessments of property for taxation for county and state purposes, be enrolled alphabetically by the township or precinct assessors of the townships or precincts in which they separately reside. On such enrollment list and opposite the name of every person exempt from military duty, or a minor, or in the active militia, the assessor shall write the word "exempt," and the reason of such exemption, "minor" or "active militia," as the case may be, and shall sign such lists and file them in the offices of the respective county clerks at the time prescribed by law for filing and returning the assessment rolls, and the clerk shall, on or before the first day of August in each year thereafter, make a certified report thereof to the adjutant general.

SEC. 7. [**Commander-in-chief.**—The governor shall be commander-in-chief of the militia, and may employ it or any part of it in the defense or relief of the state, or any part of its inhabitants or territories, and shall have all the powers necessary to carry into effect the provisions of this act.

SEC. 8. [**General staff.**—His staff shall consist of an adjutant general with the rank of brigadier general, a quartermaster general, a surgeon general, a commissary general, each with the rank of a colonel; an assistant adjutant general with the rank of lieutenant colonel; one inspector general with the rank of major; one advocate general with the rank of captain, appointed by him, who shall perform such duties as shall be prescribed by him or assigned to them by general orders of the commander-in-chief.

SEC. 9. [**Arms of service—Enlistments—Minors.**—The Nebraska National Guards shall consist of not more than two regiments of infantry, one company of artillery, and two battalions of cavalry, (of not more than three nor less than two companies), and such independent companies and battalions as the good of the service may require. All enlistments shall be for the term of three years, and made by signing duplicate enlistment papers in such form as may be prescribed by the adjutant general, and one to be filed with the records of the company or band to which such enlistment is made. No enlistment shall be allowed other than able-bodied male citizens of this state between the ages of eighteen and forty-five years. In time of peace no minor shall be enlisted without the written consent of his parents or guardian, and no allowance, pay or compensation shall be given by the state to any enlisted man not certified by the surgeon of his regiment to be able-bodied in accordance with the standard prescribed by the surgeon general.

SEC. 10. [**Brigade and staff.**—The regiments, battalions and companies shall constitute one brigade under the command of a brigadier general appointed by the commander-in-chief. The said brigadier general shall nominate on his staff a brigade adjutant with the rank of lieutenant colonel, one brigade commissary, and one brigade quartermaster with the rank of major, and two aides-de-camp with the rank of captain.

SEC. 11. [**Regiment—Officers.**—Each regiment shall consist of not more than ten (10) companies and regimental band, with a colonel, a lieutenant colonel



and major. Each colonel shall nominate on his staff one surgeon with the rank of major, one chaplain with the rank of captain, one adjutant with the rank of first lieutenant, one quartermaster with the rank of first lieutenant, one sergeant major, one quartermaster sergeant, one commissary sergeant, one hospital steward, one drum major, and one fife major, and shall issue his warrants for such appointments.

SEC. 12. [**Infantry company—Regimental band.**].—Each company of infantry shall consist of not more than fifty nor less than forty men, with one captain, one first lieutenant, one second lieutenant, five sergeants, eight corporals, and two musicians to be nominated by the company. Each regimental band shall consist of not more than twenty nor less than twelve members.

SEC. 13. [**Artillery company.**].—The company of artillery shall consist of such officers and men and be attached to such regiment as the commander-in-chief shall order. All meetings for the nominations of commissioned officers shall be ordered by the commander-in-chief under such regulations as to time and place as he may prescribe, due notice thereof to be given by him to the commanders of regiments and battalions, and by them to the respective commands by reading such orders at a meeting of such commands.

SEC. 14. [**Officers, how chosen.**].—The brigade, regimental and company officers shall be chosen from among the officers and men of the Nebraska National Guards upon recommendation of the respective commands subject to the approval of the governor, who shall issue his warrant of commission to such officers.

SEC. 15. [**Non-commissioned officers.**].—The commandant of each company from its enlisted men shall nominate its sergeants and corporals to the commander of his regiment (on recommendation of the members of each company), who shall issue his warrant of appointment to the person nominated.

SEC. 16. [**Discharge.**].—All persons serving three years consecutively in the Nebraska National Guards are entitled to an honorable discharge.

SEC. 17. [**Resignations.**].—The resignation of any staff officer shall be made to his immediate commanding officer, and if approved by him, shall be forwarded to the commander-in-chief, who shall accept it and grant an honorable discharge. The resignation of any other commissioned officer shall be made to the commander-in-chief through the respective company, regimental and brigade commanders, who shall indorse their approval or disapproval thereon; *Provided*, that the resignation of an officer shall not be accepted while under charges for the commission of any offense.

SEC. 18. [**Discharge.**].—The commissioned officers, both field, line, and staff, may at his option be honorably discharged after serving three years from the date of the warrant of their appointment.

SEC. 19. [**Company by-laws.**].—Each company and band may make by-laws for its government, which shall be binding on its members when approved by the commander-in-chief, and all fines and penalties imposed by such by-laws shall be collected as hereinafter provided.

SEC. 20. [**Arms, equipments, etc., furnished.**].—Upon the organization of any company of the Nebraska National Guards, on the requisition of its commanding officers and the approval of the governor, the quartermaster general shall furnish such company at the expense of the state with suitable arms, armories, ammunition, equipments, colors, camp equipage and transportation from its armory to the place of parade or encampment; *Provided*, That when any arms, equipments, colors, or camp equipage are delivered to any commander, he shall execute and deliver to the adjutant general a bond, payable to the state of Nebraska in a sufficient sum and with sufficient sureties, to be approved by the governor, conditioned for the proper use of such arms, equipments, colors and company equipage, and the return of the same, when requested by the proper officers, in good order, wear, usages and unavoidable loss and damage excepted.

SEC. 21. [**Armories.**].—The armory of each company shall be subject to the orders of the quartermaster general and be under the charge of its commanding officer, who shall keep therein all property furnished the company.

SEC. 22. [**Same—Inspection.**]—The quartermaster general shall cause annually to be inspected the armories of all state property in the possession of the National Guards, and cause to be repaired all such property as he shall find to be damaged.

SEC. 23. [**Officer's uniform.**]—Every commissioned officer shall furnish himself with a complete uniform, such as prescribed for officers in the United States army of the same rank.

SEC. 24. [**Uniforms.**]—The regulation uniform of the United States army is hereby prescribed for the members of the Nebraska National Guards, and all the uniforms for the members shall be furnished by the state on requisition by the commanding officer of each company accompanied by a sworn statement of the number of men in active service and belonging to his company, shall be made by such commanding officer upon the quartermaster general, who shall furnish such commanding officer with the uniforms.

SEC. 25. [**Property in uniforms.**]—Every uniform so furnished by the state shall continue to be its property for three years, when it shall become the property of the company, but until such time said uniform shall remain in the company armory or room, or in charge of the commanding officer of such company or some suitable person by him appointed for that purpose, except when worn in the discharge of military duty; and every non-commissioned officer or private who shall neglect to return any property of the state to the officer or person in charge of the armory, when notified by the commanding officer of the company so to do, shall be fined in any sum not exceeding fifty dollars (\$50.00), to be prosecuted and collected as in other cases of misdemeanors.

SEC. 26. [**Arms, when issued.**]—No arms shall be issued to any company until the same is uniformed and properly organized as herein provided and it is hereby made the duty of the adjutant general to collect all arms heretofore issued to persons not now regularly organized as members of the Nebraska National Guards and who do not now preserve any regular organization and who do not uniform themselves and meet for drill and improvement in military science.

SEC. 27. [**Adjutant general—Records—Returns.**]—The adjutant general shall issue all orders of the commander-in-chief and shall keep a record of the proceedings of his office. The records of the brigade and of each regiment, company and band shall be kept by its proper officer in such form as the adjutant general shall prescribe; he shall also furnish all proper blank books, forms and blanks and such military instruction books as the commander-in-chief shall approve, and annually report to the commander-in-chief the condition of the National Guards with a roster of all the commissioned officers and such other matter relating to the National Guards as he may deem expedient, including an itemized statement of the amount of apportionment required by the legislature for his department under the provisions of this act, and on or before the first Monday in January annually make a return of the guard of the state, their arms, accoutrements and ammunition to the president of the United States.

SEC. 28. [**Quartermaster general.**]—The quartermaster general shall take care of all public property belonging to his department, and annually report to the commander-in-chief on or before the first Monday in December of each year, a complete inventory of such property and the place in which it is deposited with a detailed account of all articles consumed or issued and money expended in his department not previously reported.

SEC. 29. [**Surgeon general.**]—The surgeon general shall examine and determine the candidate for regimental surgeons and hospital stewards, shall have general supervision and control of all matters pertaining to the medical department of the National Guards prescribed in general orders, the physical and mental disabilities exempting from military duties.

SEC. 30. [**Commissary general.**]—The commissary general in time of war or insurrection shall procure supplies and subsistence for the troops, and shall report the state of his department to the commander-in-chief on or before the first Monday in December of each year.

**SEC. 31. [Bonds of quartermaster and commissary general.]**—The quartermaster general and commissary general shall execute all orders given them by the commander-in-chief and shall each execute a bond, with sureties to the state, to be approved by the state treasurer, in the sum of fifteen thousand dollars, conditioned for the faithful performance of the duties of their offices.

**SEC. 32. [Inspections.]**—When ordered out for inspection, the regiments shall be inspected in accordance with the rules of the United States army by the inspector general, who shall report the quality and condition of the uniforms, arms and equipments of both officers and men, and the other details of his inspection to the adjutant general.

**SEC. 33. [Annual reports.]**—The commander of each company shall annually in October, make a certified return of the equipments of his command to the commanding officer of his regiment, and like returns of staff officers and regimental bands shall be made by their regimental commanders and of other staff officers by their immediate commanders.

**SEC. 34. [Reports after parade.]**—The commandant of each company shall, within ten days after each parade or encampment required by law, make return to the regimental commandant, of the state of his company, of all their arms, ammunitions, uniforms and equipments. The commandant of each regiment shall make like returns, together with the roster of its officers, to the brigadier general within twenty days after each encampment or parade, who shall make a like return for the brigade, with a roster of its commanding officers, to the adjutant general, on or before the first day of December, annually. The adjutant general may order from each company such additional returns and muster rolls as he may deem expedient.

**SEC. 35. [Board to prepare regulations.]**—The commander-in-chief shall appoint a board of five commissioned officers who shall prepare rules and regulations to establish a uniform system for the government of the several organizations, and report the same to the commander-in-chief; when approved by him he shall cause the same to be published by general order, for the information and guidance of the Nebraska National Guards.

**SEC. 36. [Pay.]**—There shall be paid for each days service in complete uniform, when called out by the commander-in-chief, the same pay, transportation, ration, commutation and forage, as is prescribed by the army regulations of the United States to privates, musicians and officers; *Provided*, That on parades and encampments authorized by this act, they shall receive transportation and commutation of rations only; *Provided, further*, That the adjutant general shall receive an annual salary of five hundred dollars; *Provided*, Nothing in this act shall be construed to authorize the commander-in-chief to call out the Nebraska National Guards for any purpose, except to execute the laws, suppress insurrection, or to repel invasion.

**SEC. 37. [Pay rolls.]**—Pay rolls for services shall be forwarded in duplicate to the adjutant general within ten days after such services by the company, regiment, brigade, field and staff officers and bands by their respective commandants with a certificate under oath by such commandants that the person therein named has performed the duty and is entitled to the pay therein specified. The adjutant general shall forward one of such pay rolls, if approved by himself, to the commander-in-chief within ten days thereafter, and if approved shall be certified to the auditor of public accounts.

**SEC. 38. [Warrant of auditor.]**—The auditor of public accounts is hereby authorized and required, upon presentation of the proper vouchers and pay roll, to draw his warrant on the state general fund and against the appropriation made by the legislature authorized by this act.

**SEC. 39. [Fines deducted from pay.]**—The commanding officer shall deduct from the pay of any member of his command the amount of all fines, penalties and dues due from such member under the by-laws of such company or any provision of this act.

**SEC. 40. [Pay of surgeons.]**—Regimental surgeons when not on regular duty with their regiments or officers ordered on special service by the commander-in-chief, shall receive such pay for their services as may be determined by the commander-in-chief.

**SEC. 41. [Adjutant general's report.]**—The adjutant general shall report to the legislature, on or before the first day of each biennial session thereof, the amount of funds required to pay the officers and men, armory rent, clothing, arms, and equipments, transportation, rations, forage, stationery, and fuel, and the legislature may provide by an appropriation out of the state general fund a sufficient sum of money to meet the requirements of this act.

**SEC. 42. [Militia exempt from civil duties.]**—The officers and men of the Nebraska National Guards shall be exempt from working on roads and highways and from the payment of any poll tax levied for that purpose, and shall be exempt from sitting on any grand or petit jury within this state while a member of the Nebraska National Guards.

**SEC. 43. [Parades.]**—The Nebraska National Guards shall parade for drill one day annually in September by company or regiment as ordered by the brigadier general, and the infantry shall encamp for drill four successive days between the tenth day of August and the twentieth day of September by regiment or brigade annually or bi-annually as ordered by the commander-in-chief, but such regiment shall perform such encampment duty at least once in two years.

**SEC. 44. [Same.]**—The place of such encampment shall be designated by the proper commanding officer, subject to approval by the commander-in-chief. Orders for encampment shall be given at least twenty days prior thereto, and for said parades at least five days prior thereto, by depositing the same in the mail, properly addressed to the person to be notified, or by leaving the same at his usual place of abode, or by reading the same to his respective commands. Each section of artillery shall parade one day in September for drill in its own town, and the commander-in-chief may, at his discretion, order any section of artillery to attend regimental encampment. No member of the Nebraska National Guards shall be exempt or relieved from military duty by membership or service in any fire company.

**SEC. 45. [Same—Absences.]**—Every company when encamped shall have roll call on the first day at noon, and at tattoo; on the remaining days at reveille, at noon and at tattoo; absence without leave from either of said roll calls, shall be deemed as absence for the entire day, and so reported on the pay roll. The commander of the regiment shall detail officers from his staff, who shall attend the roll calls of the companies, and report to him the names of absentees of such companies, and such report shall be forwarded to the adjutant general.

**SEC. 46. [Power of commandant.]**—The commanding officer of any encampment or parade may cause those under his command to perform any field or camp duty he shall require, and may put under arrest, during such encampment or parade any member of his command who may disobey a superior officer, or be guilty of disorderly or unmilitary conduct, and any other person who may trespass upon the parade or encampment ground, or molest the orderly discharge of duty by the members of his command; and he shall prohibit the sale of all spirituous and malt liquors within one mile of such parade or encampment.

**SEC. 47. [Target practice—Conduct of commandant.]**—The brigadier general shall direct such target practice at the annual parade or encampment, as he may deem expedient, and shall attend such encampment and report the conduct and discipline thereof to the commander-in-chief, who, if he shall judge that such encampment has been prejudicial to good morals or military discipline in any regiment shall not permit another encampment of such regiment until its commanding officer has resigned or been removed.

**SEC. 48. [Requisition for encampments.]**—The commanding officer of each encampment shall make a requisition on the quartermaster general at least ten days prior thereto for the necessary transportation, tents, blankets, camp

equipage and supplies therefor, and if approved by the adjutant general, shall furnish the same.

**SEC. 49. [Company drills—Inspections.]**—The commandant of each regiment may order semi-monthly, evening drills by any company of his command from October to April inclusive, of not less than one hour each, and shall inspect at least one evening drill of each company during said period, or detail a field officer for such inspection. The officer making such inspection shall receive his necessary traveling expenses, to be paid upon certified vouchers of the proper officer, approved by the adjutant general.

**SEC. 50. [General discipline—Court martial.]**—The commander-in-chief shall have power to enforce discipline, and may prescribe all needful rules and regulations to maintain order and discipline among the officers and men of the State National Guards by general orders issued by him to the several commands, and to enforce the same may order courts of inquiry and courts martial under a regulation as to the formation of and power of said courts and mode of procedure in the trial of offenses against the military law of the state, and detail as to the carrying into effect the finding and judgments of said courts; *Provided*, That the courts organized by virtue of this act shall not have power to fine or imprison any officer or soldier for any crime committed by him punishable by criminal procedure under the laws of this state.

**SEC. 51. [Officers may arrest offenders.]**—Any commissioned officer of the several commands shall have the ordinary powers of a sheriff to arrest any officer or enlisted man for the commission of any crime punishable under the laws of the state, while on any duty authorized by this act, and may proceed against any such offender by information or complaint before any court of law having cognizance of such offense, and may call to his aid as many of his men as may be necessary to make such arrest.

**SEC. 52. [Limit of appropriations.]**—In no case shall the appropriations for carrying out the provisions of this act exceed five thousand dollars for the first year, and two thousand five hundred for each succeeding year, until otherwise provided by law.

**SEC. 53. [Repealed chap. 43, G. S. 470.]**

## CHAPTER 57.—MILLS AND MILL-DAMS.

**SECTION 1. [Ad quod damnum—Application for writ.]** If any person, desiring to erect a dam across any water-course for the purpose of building a water grist, saw, carding, or fulling mill, or of erecting any machinery to be propelled by water, be the owner of the lands on which he desires to build such mill or erect such machinery, on one side of such water-course and not of the lands on the opposite side against or upon which he would abut his dam; or, if any person be the owner of the lands, on which he desires to erect any such mill or machinery on both sides of such water-course; or, if any person shall have erected such mill and mill-dam on his own lands, he may file a petition for leave to build or continue such mill-dam and for a writ of *ad quod damnum* in the district court of the county where such lands lie, against the owners or proprietors of the lands above and below such dam, which are, or probably will be, overflowed or injured thereby, or against or upon which he may desire to abut his dam.

**SEC. 2. [Petition.]**—The plaintiff shall set forth in his petition, as near as may be, the place where such dam is built, or proposed to be built, the height or proposed height of such dam, the kind of mill built or proposed to be built, his title to the lands whereon he has erected or proposes to erect such mill or machinery, whether legal or equitable, and shall describe with certainty the lands above and below such dam, the property of others which are, or will probably be over-

NOTE.—“An act relating to mills and mill-dams.” G. S. 472. Took effect Feb. 26, 1873. In proceedings under this act, where A in good faith commenced the erection of a mill, of which B had notice, and to which he made no objection, he cannot, after A has expended a considerable sum on his mill, enjoin him from erecting a dam, the effect of which would be to flow the water back on an unoccupied mill site owned by B. 10 Neb. 465.

flowed or injured as aforesaid, and shall give the name of the owner of each tract, or, if the name of any such owner be unknown, the plaintiff shall so state in his petition.

**SEC. 3. [Writ—Notice to defendants.]**—The court may thereupon order the clerk to issue the writ, directed to the sheriff, commanding him to make out a list of twenty-four disinterested freeholders of the county and return the same to the clerk of said court forthwith; and to notify each of the defendants, if found within the county, that the plaintiff, naming him, has filed his petition against the defendants, naming them, in said court, for leave to build or continue his mill-dam at the place stated in the petition, to be set forth in said writ and notice, and that a writ of *ad quod damnum* has been granted by such court, and of the day and term when the same was granted, and that they are required to appear at the office of said clerk, on a day and hour to be fixed by the sheriff, and named in said notice, and then and there, in the presence of the said clerk, to strike, alternately with the plaintiff, a jury of inquest; and further commanding said sheriff to summon and impanel the jury so struck to meet on the lands where such dam is built or proposed to be built, on a day and hour to be named by the court, and inserted in the order granting the writ, then and there to inquire and report of the matters to be given them in charge.

**SEC. 4. [Same—Service.]**—The notice to be served upon the defendants as aforesaid shall be in writing, and shall be served at least ten days before the time fixed for striking the jury, by delivering a copy to each defendant personally or by leaving such copy at his usual place of residence.

**SEC. 5. [Same—By publication.]**—If any defendant's name be unknown, or if he be not a resident of the county, the plaintiff may, at the time he brings his petition or at any time thereafter, file with the clerk an affidavit to that effect, and thereupon may obtain service upon such non-resident or unknown defendant by publication. The publication must be made four consecutive weeks in some newspaper printed in the county where the petition is brought, or if no newspaper be printed in such county, then in some newspaper printed in the state and of general circulation in the county. It must notify the defendant of the time when the petition was filed, of the object and purpose thereof, of the place where the dam has been or is proposed to be built, as near as may be, of the term when said petition will stand for hearing, and must contain an accurate description of the lands, owned by such defendant that are likely to be overflowed or injuriously affected, or against or upon which it is proposed to abut such dam, as the case may be. Such publication must be completed at least one term before the final adjudication in the matter.

**SEC. 6. [State lands affected.]**—Should any of the lands, likely to be overflowed or injured, or upon or against which it is proposed to abut such dam as aforesaid, be public lands of the state, the court may direct the prosecuting attorney to see that the interests of the state are protected, or may appoint some suitable person to act in his stead, who shall be sworn faithfully and impartially to discharge his duties as attorney for the state in the matter, and who shall be paid a fee, not to exceed twenty-five dollars, to be taxed as costs of the plaintiff.

**SEC. 7. [Jury of inquest.]**—On the day fixed for striking the jury as aforesaid, the plaintiff and defendants or their agent or attorney, shall alternately in the presence of the clerk, strike out one name from said list of twenty-four, until but twelve remain, and such twelve shall be the jury, and the clerk shall certify their names to the sheriff. Should the defendants fail to appear, or should they refuse or fail to strike, or if they are unable to agree on any name or names to be struck from said list, in their turn, the clerk shall strike in their stead.

**SEC. 8. [Same—Duties.]**—The jury so struck shall be summoned and impaneled by the sheriff, and, being sworn faithfully and impartially to inquire and report of the matters to be given them in charge, shall be charged by the sheriff, as the circumstances of the case may require, substantially as follows: *First.* To view the land proposed for an abutment and to locate and circumscribe by

metes and bounds one acre thereof, having due regard therein to the interests of both parties, and to appraise the same according to its true value. *Second.* To examine the lands above and below the property of others, which are, or may probably be overflowed or injured, and say what damage it has been, and will be to the several defendants, naming them, and whether the mansion house of any such defendant or defendants, or the offices, curtilages, or gardens thereunto immediately belonging, will be overflowed or injured. *Third.* To inquire whether, and in what degree fish of passage, or ordinary navigation will be obstructed, and whether, in their opinion the health of the neighborhood will be annoyed by the stagnation of the water. *Fourth.* Whether and by what means, any such obstruction, annoyance, or injury can be prevented. *Fifth.* Whether such mill is, or will be, of public utility.

**SEC. 9. [Return of inquest—Answer.]**—The inquest so made, being signed by the jurors, shall, together with the writ, be forthwith returned by the sheriff to the office of the clerk of such court. Should such return be made in vacation, the defendants, or any of them, shall have until the first day of the next term, to show cause why the plaintiff should not have leave to build or continue his said mill-dam. Said time may be extended by the court on good cause shown. If the return be made in term, the court shall, by order, fix a reasonable time within which such cause may be shown.

**SEC. 10. [Interested parties—Amendments.]**—Any person interested in or affected by any inquest or proceeding provided for in this act, may, on motion, and proper showing, be made a defendant therein; and the court may permit amendments of the proceedings, and allow new parties to be brought in, on motion of the plaintiff, as in other cases.

**SEC. 11. [Trial—Proceedings.]**—Any defendant may, after the return of the sheriff, aforesaid, traverse, by way of answer, any material fact stated in the petition or inquest, or he may plead any valid matter in bar of the plaintiff's right to have the benefit of the writ; or he may file exceptions for substantial defects to the writ, the inquest, or any of the proceedings herein provided for; and issues of law, and of fact, may be made up and tried as in other cases; and the court may quash the writ, or set aside the inquest, and may award a new writ on payment of all costs by the party who has built, or proposes to build, such mill-dam, or the court may dismiss the proceedings, or may ratify and confirm such inquest.

**SEC. 12. [Same—Judgment.]**—If on such inquest or trial it shall appear to the court that the mill or appurtenances thereunto belonging, or the mansion house of any defendant or curtilage or garden thereunto immediately belonging, will be or has been overflowed or injured, or the health of the neighborhood annoyed, they shall not give leave to build or continue such mill-dam; but, if none such injuries have accrued, nor will be likely to accrue, they shall proceed to adjudge whether under all the circumstances it be just and reasonable that such leave be given or not given.

**SEC. 13. [Same—Dam erected.]**—In case such petition be filed by the plaintiff, after having erected his mill-dam, no damages shall be allowed and the application shall be dismissed, unless the case be such that leave would have been given to build such mill-dam if such petition had been brought before the erection thereof.

**SEC. 14. [Persons damaged—Proceedings.]**—Where any person may have built a mill or other dam whereby the water of any river, creek, run, or spring may be rendered stagnant, or any lands may be overflowed or injured thereby, any person, or any number of persons interested therein, or who may be damaged by the stagnation or overflowing of said water, or otherwise, may file a petition against the owner of such mill-dam for such writ, and like proceedings shall be had *mutatis mutandis*, as where the owner of a mill-dam so built brings the petition. But such owner shall have ten days previous notice of the filing of the petition.

**SEC. 15. [Fee of mill site.]**—If the petition is brought to obtain leave to build a mill-dam, and such leave is granted, the plaintiff shall, upon paying respectively to the persons entitled the value of the acre so located and the damages assessed on the inquest aforesaid, become seized in fee-simple of the said acre of land; but, if he shall not within one year after the final adjudication, begin to build said mill, and finish the same within three years, and afterwards continue it in good repair for public use, or, in case said mill and dam, or either of them, be destroyed, if he shall not begin to rebuild the same within one year after such destruction, and finish the erection thereof within three years thereafter, the said acre of land shall revert to the former proprietor and his heirs, unless at the time of such destruction the owner of such mill be an infant, or imprisoned, or of unsound mind, in which case the length of time above specified shall be allowed after such disability is removed.

**SEC. 16. [Damages—Assessment.]**—Where the petition is brought against the owner of a mill-dam already built, as provided in section fourteen of this act, and the mill is found to be of public utility, or where the petition is brought to obtain leave to build or continue a mill-dam, the jury shall assess such damages as the party or parties injured may have sustained, and will sustain, by the erection and continuance of such mill-dam. But, where the petition is brought against the owner of a mill-dam as aforesaid, and such mill is not found to be of public utility, no damages shall be assessed for injuries which may accrue by the continuance of such mill-dam.

**SEC. 17. [Damages—Judgment.]**—Where the petition is brought to obtain leave to build or continue a mill-dam, and such leave is granted, or where it is brought against the owner of a mill-dam as aforesaid, the court may render judgment for the damages assessed against the person owning or proposing to build such mill; and such assessment of damages, when fully paid and satisfied, after confirmation thereof by the court, shall bar a recovery for any damages or injury sustained previous or subsequent to such inquest in any and every action at law; *Provided, however,* That where the petition is brought against the owner of a mill-dam already built as aforesaid, unless the mill is found to be of public utility, such assessment, though paid and satisfied, shall not bar a recovery for damages or injuries which may accrue thereafter.

**SEC. 18. [State land—Damages.]**—The damages assessed upon public lands of the state shall be collected as in other cases, and paid into the state treasury to the credit of the proper fund.

**SEC. 19. [Infant defendants.]**—Should any of the defendants to the petition be infants, the proceedings shall be conducted in all respects as if such infants were of full age; but the court shall appoint some suitable and discreet person not of kin to the plaintiff, to act as guardian *ad litem* for such infants. Such guardian *ad litem* shall appear and defend for such infants, but no confession, admission, or default on his part shall prejudice or affect their rights or interests.

**SEC. 20. [Costs.]**—Should no resistance be made to proceedings brought under this act to obtain leave to build or continue a mill-dam, the costs shall be adjudged against the plaintiff; but if such proceedings be resisted in any stage thereof, the court shall equitably adjust the costs which are caused by such resistance, having regard to the event.

**SEC. 21. [Jurors—Vacancies.]**—Should any of the jurors so summoned, fail to appear at the time and place appointed for the inquest, the sheriff shall forthwith prepare a list of three disinterested freeholders of the county for each juror so in default, and of the list so prepared, the plaintiff, and defendants, their agent or attorney, shall alternately, in the presence of the sheriff, strike out one name till but the number required to fill the panel remains. If the defendants fail to appear, or should they refuse or fail to strike, or if they are unable to agree upon any name or names to be struck from said list in their turn, the sheriff shall strike in their stead. The sheriff shall forthwith summon the freeholders so



chosen, and the same proceedings shall be thereupon had as when all the jurors appear.

**SEC. 22. [Defaulting jurors—Punishment.]**—The sheriff shall in his return report to the court the name of any juror so in default as aforesaid, and on motion of the plaintiff, such defaulting juror may be attached as for contempt, and unless when brought before the court, he then and there purge himself of such contempt to the satisfaction of the court, he may be adjudged to pay the costs incurred by reason of his said default, and to stand committed until the same are paid; and unless he voluntarily appear to purge himself as aforesaid, he shall in any event, pay the costs of such attachment.

**SEC. 23. [Jurors' fees.]**—Each juror shall be allowed one dollar for each days attendance upon such inquest, and other costs shall be allowed as in other cases.

**SEC. 24. [Preservation of mill.]**—When the water backed up by any mill-dam belonging to any mill or machinery is about to break through or over the banks of the stream, or to wash a channel so as turn the water of such stream, or any part thereof, out of its bed or ordinary channel, whereby such mill or machinery will be injured or affected, the owner or occupier of such mill or machinery, if he do not own such bank or banks, or the lands lying contiguous thereto, may, if necessary, enter thereon, and erect and keep in repair such embankments, fortifications, and other works, as shall be requisite to prevent such water from breaking through or over the bank or banks of such stream, or washing a channel as aforesaid, such owner or occupier committing thereon no unnecessary waste or damage.

**SEC. 25. [Same—Damages.]**—Nothing contained in the last preceding section shall be construed to bar the owner of such bank or banks, or lands lying contiguous thereto, from recovering the amount of any injury which he may have actually and in fact sustained, by the erection or repair of such embankment, fortification, or other works.

**SEC. 26. [Injuring mill site.]**—If any person shall injure, destroy, or remove any such embankment, fortification, or other works, the owner or occupier of such mill or machinery may recover of such person all damages which he may sustain by reason of such injury, destruction or removal.

**SEC. 27. [Public mills.]**—All mills within this state, now in operation or which hereafter may be put in operation, for grinding wheat, rye, or corn, or other grain, and which shall grind for toll, shall be deemed public mills.

**SEC. 28. [Duties of miller.]**—The owner or occupier of every public mill within this state shall grind the grain brought to his mill as well as the nature and condition of his mill will permit, and in due time as the same shall be brought.

**SEC. 29. [Rates of toll—Posting.]**—The owner or occupier of every public mill shall cause a statement of the rates of toll by him charged for grinding and bolting the different species of grain, to be posted in at least two conspicuous places within the mill; and such statement shall be either written or printed in a plain and legible manner, and the county commissioners of each county shall establish and regulate the amount of toll allowed to be charged.

**SEC. 30. [Measures.]**—He shall keep in his mill an accurate half-bushel measure, and an accurate set of toll dishes.

**SEC. 31. [Liability of miller.]**—He shall be accountable for the safe keeping of all grain received in his mill for the purpose of being ground, with the bags or casks containing the same, and shall, when required deliver the same, or the flour or meal thereof, to the owner, or his or her agent, or order, or servant, with the bags or casks in which the same was received; *Provided*, That such miller shall not be accountable for any bags or casks, unless the same be distinctly marked with the initial letters of the owner's name, nor for the loss of grain, bags or casks which shall happen by unavoidable accident.

**SEC. 32. [Taking too much toll—Penalty.]**—Any owner or occupier of any public mill, who shall, by himself or agent, or servant, take a greater rate of

toll than that inserted in the statement required in section twenty-nine, or shall in any manner fail to comply with the provisions and requirements of this act, shall forfeit to the party injured, the sum of twenty-dollars, which penalty may be sued for and recovered before any court of this state having jurisdiction thereof.

**Sec. 33. [Public changed to private mills.]**—Any owner or occupier of any public mill may, by giving thirty days' notice in writing, change such public mill into a private one; such notice shall be posted on the mill, and in at least two other conspicuous places within the county; *Provided, however,* That such mill shall no longer grind for toll after expiration of the date of said notice; *Provided,* That no party shall change his mill to a private mill, until fully reimbursing all parties who have assisted in its erection.

**Sec. 34. [Repealed chap. 36. R. S. 262.]**

#### CHAPTER 58.—MINERALS.\*

**SECTION 1. [Mining tools—Taxation.]**—That all tools and implements and machinery used solely in opening and working any coal mine situated in the State of Nebraska, shall, for the term of three years after the passage of this act, be exempted from taxation. [1875 § 1, 156.]

**Sec. 2. [Award for discovery of coal or iron.]**—That when it shall be made apparent to the governor of Nebraska by affidavit of the owner or owners thereof, that a vein of coal not less than twenty-six inches in depth, and of sufficient capacity to pay to mine, and within paying distance from the surface, has been discovered, or vein of good iron ore eighteen inches thick, it shall be the duty of the governor to appoint a suitable person to examine the same, whose duty it shall be to report the probable extent and capacity of the vein, or veins, upon personal examination and measurement of said vein or veins, all expenses for said examination to be paid for by the owner, or owners of said mines. Said report being satisfactory to the governor, he shall direct the auditor to draw an order on the treasurer for the sum of four thousand dollars to be paid to the owner, or owners of said mine of coal, and of two thousand dollars, for a vein of iron ore one foot thick; if the vein of coal discovered should be three feet in depth, four thousand dollars, and of the required capacity. Said orders to be paid out of the general fund of the state treasury, as above directed.

**Sec. 3. [Specimens of strata preserved.]**—It shall be the duty of the persons prospecting for coal or iron ore, carefully to preserve specimens of each strata through which its shafts are sunk, or borings are made and if the bonus is obtained, on the conditions before mentioned in this bill, to deposit the same, properly labelled, in care of the department of the state for the future use of the commonwealth.

**Sec. 4. [Application of act.]**—The provisions of this act shall not apply to any veins of coal already discovered nor shall any bonus be paid for striking the same vein within twenty-five miles.

#### CHAPTER 59.—MONEY.†

**SECTION 1. [Denominations.]**—The money of account of this state, is the dollar, cent, and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in money of the above denomination.

**Sec. 2. [Same.]**—The above provisions shall not in any manner affect any demand expressed in money of another denomination; but such demand, in any suit or proceeding affecting the same, shall be reduced to the above denomination.

\*NOTE.—"An act to encourage the opening and developing of coal and other mineral interests in the state of Nebraska." Laws 1875, 156. Took effect Feb. 23, 1875. See sec. 1, ante p 195. See also sec. 1, art. IX, Const., p. 31.

†NOTE.—Chap. XXXVII, R. S. 269. Chap. 45, G. S. 480, except secs. 3 and 4, repealed 1881, 102.

CHAPTER 60.—NAMES.\*

**SECTION 1. [Authority of district court.]**—That the district court shall have authority to change the names of persons, towns, villages, and cities within this state. [1871, 62. G. S. 483.]

**SEC. 2. [Person's name—How changed.]**—That any person desiring to change his or her name, may file a petition in the district court of the county in which such person may be a resident, setting forth: *First.* That the petitioner has been a *bona fide* citizen of such county for at least one year prior to the filing of the petition. *Second.* The cause for which the [change of] petitioner's name is sought. *Third.* The name asked for. And it shall be the duty of the district court at any term thereof after the filing of such petition, upon being duly satisfied, by proof in open court, of the truth of the allegations set forth in the petition, and that there exists proper and reasonable causes for changing the name of the petitioner, and that thirty days previous notice of the intended application had been duly given in some newspaper printed in such county; or in case no newspaper be printed in the county, then in some newspaper in general circulation therein, to order and direct a change of name of such petitioner, and that an order for the purpose be made in the journals of such court.

**SEC. 3. [Name of towns etc.—How changed.]**—That whenever it may be desirable to change the name of any town, village, or city in any county of the state, a petition for that purpose may, in like manner, be filed in the district court of such county, signed by a majority of the legal voters of such town, village, or city, setting forth the cause why such change is desirable, and the name prayed for to be substituted, and the court upon being satisfied by proof that the prayer of the petitioners is reasonable and just, and that notice as required in the foregoing section had been given, and that two-thirds of the legal voters of such town, village, or city, desire the said change, and that there is no other town, village, or city in the state of the name prayed for, may order the change prayed for in such petition.

**SEC. 4. [Costs—Vested rights.]**—All proceedings under this act shall be at the cost of the petitioner or petitioners, for which fee-bill, or execution may issue as in civil cases; *Provided always,* That any change of names under the provisions of this act, shall not in any manner affect or alter any right of action, legal process, or property.

CHAPTER 61.—NOTARIES PUBLIC.†

**SECTION 1. [Appointment—Term of office.]**—The governor is hereby authorized to appoint and commission such number of persons to the office of notary public, in each of the respective counties of this state, as he shall deem necessary, not exceeding the number hereinafter limited, each of whom shall hold the office for the term of six years from the date of his commission, unless sooner removed, who shall reside in the county for which he was appointed and commissioned. [1869 § 1, 20.]

**SEC. 2. [Commission—Notice by county clerk.]**—When any person shall be appointed to the office of notary public, the governor shall sign the commission of such person, and deliver the same to the secretary of state. Upon the receipt of such commission by the secretary, he shall affix thereto the great seal of state, and attest the same, and transmit by mail or messenger, the commission and a blank bond, to be executed by the person so appointed and commissioned, to the county clerk of the county for which such appointment was made, who shall within five days after the receipt by him of such commission, notify the person so appointed that he holds the commission and blank bond, and if the person appointed to such office does not, within thirty days after the date of such notice,

\*NOTE.—"An act to authorize district courts to change the names of persons, towns, villages and cities within this state." Laws 1871, 62. Chap. 47. G. S. 483.

†NOTE.—"An act to provide for the appointment of notaries public, and to define their duties." Laws 1869, 20, chap. 49, G. S. 493. Took effect Feb. 8, 1869. SEC. 3. See ante p. 74.

execute the bond hereinafter mentioned, deliver the same to the clerk of the county, qualify, and receive his commission, the clerk shall return such commission to the secretary of state to be cancelled.

**SEC. 3. [Bond—Record by county clerk.]**—Each person so appointed to the office of notary public shall, within the time limited in section two of this act, appear before the clerk of the county for which he was appointed, and demand the blank bond so transmitted by the secretary of state, and execute and deliver to such clerk a bond for the state of Nebraska, in the penal sum of two thousand dollars, with two securities, residents of such county, who shall severally justify, as hereinafter prescribed, conditioned for the faithful performance of the duties of such office; and such person, so appointed to the office of notary public, shall make oath or affirmation, to be endorsed on such bond, and subscribed by the person appointed before some officer authorized by law to administer oaths, and by him certified thereon, that he will support the constitution of the United States, the constitution of the state of Nebraska, and will faithfully and impartially discharge and perform the duties of the office of notary public. The county clerk shall file and preserve the bond in his office, and record the commission, bond, justification of the sureties, and oath of office, in a book to be kept by him for that purpose, and shall transmit to the secretary of state, written or printed notice that the requirements of this act have been complied with by the person so appointed and commissioned, which notice shall be filed and preserved in the office of the secretary of state.

**SEC. 4. [Sureties on bond—Penalty.]**—The justification of sureties on the bond shall be an oath or affirmation endorsed on such bond to the effect that each of said sureties is a resident and freeholder of the county for which such notary public was appointed and is worth at least the sum of two thousand dollars, over and above all debts and liabilities by him owing, and all property exempt by law from levy or sale on execution, which oath or affirmation shall be subscribed by the sureties, and taken before and certified to by some officer authorized by law to administer oaths, and any person swearing or affirming falsely in this regard, shall be liable to and suffer all the pains and penalties of the statutes of this state, to punish persons for the crime of perjury.

**SEC. 5. [Seal—Record of official acts.]**—Each notary public, before performing any duties of his office, shall provide himself with an official seal, on which shall be engraved the words "Notarial seal," the name of the county for which he was appointed and commissioned, and the word "Nebraska," and in addition, at his option, his name, or the initial letters of his name, with which seal, by impression, all his official acts as notary public shall be authenticated. Each person so appointed and commissioned shall, also, before entering upon the duties of the office, provide himself with an official record, in which shall be recorded all his official acts, together with a copy of the instrument, certificate of protest, and notices and other matter by him acted upon—except the taking of acknowledgments, and proofs of deeds, and other instruments required by law to be recorded, either in this or other states, affidavits and depositions, and other acts not relating to protests. And the record and seal of such notary public shall be exempt from levy or sale on execution, attachment, or warrant of distraint.

**SEC. 6. [Powers—Duties—Certificate.]**—Every person, during the term of his office, so appointed, commissioned, and qualified to the office of notary public, is hereby authorized and empowered, within the county for which he was appointed to such office, to administer oaths and affirmations, in all cases; to take depositions, acknowledgments, and proofs of the execution of deeds, mortgages, powers of attorneys, and other instruments in writing, to be used or recorded in this state, to demand acceptance, or payment of any foreign, inland, or domestic bill of exchange, promissory note, or other obligation, in writing, and to protest the same for non-acceptance or non-payment, as the case may be, and give notice to endorsers, makers, drawers, or acceptors, of such demand or non-acceptance, or non-payment; and to exercise and perform such other powers and

duties, as by the law of nations, and according to commercial usage, or by the laws of the United States, or of any other state or territory of the United States, or of any other government, or country, may be exercised and performed by notaries public, and over his signature and official seal certify the performance of such duties, so exercised and performed under the provisions of this act, which certificate shall be received in all courts of this state, as presumptive evidence of the facts therein certified to; and on due proof of the loss of such original certificate, the record thereof, so kept by such notary public as is by this act prescribed, shall be received by all courts in this state as presumptive evidence of the facts therein recorded; *Provided*, That any person interested in the subject matter of such certificate or record of such certificate, may, by other evidence, contradict the matters and things set forth in such certificates, or in the record thereof.

**SEC. 7. [Depositions—Contempts.]**—Every notary public, when notice by a party to any civil suit pending in any court of this state, upon any adverse party for the taking of any testimony of witnesses by deposition, or any commission to take testimony of witnesses to be preserved for use in any suit thereafter to be commenced, has been deposited with him, or when a special commission, issued out of any court of any state or country without this state, together with notice for the taking of testimony by depositions or commissions, has been deposited with him, is empowered to issue summonses and command the presence before him of witnesses, and to punish witnesses for neglect or refusal to obey such summons, or for refusal to testify when present, by commitment to the jail of the county for contempt; and all sheriffs and constables in his state are hereby required to serve and return all process issued by notaries public, in the taking of testimony of witnesses by commission or deposition.

**SEC. 8. [Neglect of duty.]**—If any person shall be damaged or injured by the unlawful act, negligence, or misconduct of any notary public, in his official capacity, the person damaged or injured may maintain a civil action on the official bond of such notary public against such notary public and his sureties, and a recovery in such action shall not be a bar to any future action for other causes, to the full amount of the bond.

**SEC. 9. [Duties at termination of office—Penalty.]**—Each person who holds, or hereafter shall be appointed and commissioned to the office of notary public, shall, within thirty days after the expiration of the term of his office, either by limitation, removal from office, or removal from the county for which he was appointed, enter in his official record a certificate over his hand and notarial seal, setting forth that such record is his official record as such notary public, from the day of the commencement of the term of his office, or other time of the commencement of his records, to the time of the expiration of his office, and deposit such record and certificate aforesaid, in the office of the clerk of the county for which he was appointed notary public, and in the event of his death or removal from this state, such certificate shall be received in all the courts of this state as presumptive evidence that the record in which or to which such certificate shall be entered or attached, was the official record of such notary public; and any person who shall neglect or fail to comply with the provisions of this section, shall forfeit and be liable to pay to the county for which he was appointed and commissioned a notary public, for the use of the school fund, the sum of two hundred dollars, to be recovered in any court of the county having jurisdiction, in the name of the county, upon the relation of the district attorney of the district in which such county shall be situated.

**SEC. 10. [Neglect of county clerk—Penalty.]**—If any county clerk of any county in this state, shall neglect or wilfully refuse to perform the duties imposed on him by this act, or shall wilfully refuse to deliver the commission so issued by the governor to any notary public, after he shall have duly filed the bond required by this act, and qualified, such county clerk shall forfeit and be liable to pay to the county for which such notary public was appointed, for the use of the

school fund, the sum of two hundred dollars, to be recovered as provided in section nine of this act.

**SEC. 11. [Abbreviations on seal].**—No deed, mortgage, power of attorney, or other instrument, in writing, heretofore executed and acknowledged, or proven before a notary public, shall be held invalid or defective because the official seal of the notary public subscribing the certificate of acknowledgment, proof, or other official act of such notary public annexed thereto had engraved thereon the initial or abbreviation of any words, or other word or words different from those required to be contained or engraved on the seal of a notary public, by this act.

**SEC. 12. [Number—Vacancy].**—Hereafter the number of notaries public shall be limited to three for each one thousand inhabitants in each county, to be estimated upon the basis of six persons to every vote cast for the office of governor, at the state election; *Provided*, That not less than twelve notaries public may be appointed and commissioned in any county of this state, including the unorganized territory attached to such county for judicial purposes; and whenever a vacancy in the office of notary public shall occur in any county, it shall be the duty of the county clerk to notify the secretary of state of the fact, who shall keep a record in his office of the name of the person appointed, date of his commission and time of its expiration, and the time such office becomes vacant, either by removal from office, removal from the county or limitation of term of appointment; and when a vacancy shall occur in the office of notary public in any county, it shall be the duty of the secretary of state to notify the governor. [Amended 1875, 78.]

**SEC. 13. [Fees of secretary and county clerk].**—The secretary of state shall be entitled, for receiving, affixing the great seal to, and forwarding the commission of a notary public, to the sum of one dollar; and the county clerk of the county, to whom the same shall be forwarded, the sum of two dollars on each commission as fee for services under this act, to be paid by the person appointed and commissioned, before the delivery to him of the commission, which fees of the secretary of state shall be transmitted to him by the county clerk, immediately after their receipt by him.

**SEC. 14. [Removal for cause—Proceedings—Penalty].**—That whenever charges of malfeasance in office shall be preferred to the governor against any notary public in this state, or whenever the governor shall have reasonable cause to believe any notary public in this state is guilty of acts of malfeasance in office, the governor may appoint any disinterested person, not related by consanguinity to either the notary public or person preferring the charges, and authorized by law to take testimony of witnesses by deposition, to notify such notary public to appear before him on a day and at an hour certain, after at least ten days from the day of service of such notice, and summon witnesses in the manner provided by this act, for the taking of testimony of witnesses by deposition, to appear before him, at the time in said notice specified, and take the testimony of such witnesses in writing, in the same manner as is by law provided for taking depositions, and certify the same to the governor, at which time the notary public under charges may appear, cross-examine the witnesses, and produce witnesses in his behalf, which cross-examination and testimony shall be likewise certified to the governor. Upon the receipt of such examination, duly certified in the manner prescribed for taking depositions to be used in suits in the district courts of this state, the governor shall examine the same, and if therefrom he shall be satisfied the charges are substantially proven, the governor may remove the person charged from the office of notary public; and thereupon, within thirty days from such removal and notice thereof, such notary public shall deposit with the county clerk of the county for which he was appointed his commission as notary public, with his official record and certificate thereof, as prescribed by section nine of this act; and on his failure to do so, shall be liable to the penalty and payment of two hundred dollars, to be recovered in the manner provided in said section nine, which commission, on its receipt by the county clerk, shall be forwarded by him

to the secretary of state, to be canceled; and thereafter such person so removed from office shall be forever disqualified from holding the office of notary public; and the fees for taking such testimony shall be paid by the county, at the same rate as fees for taking depositions by notaries public.

SEC. 15. [Obsolete.]

SEC. 16. [Repealed chap. 38, R. S. 270.]

#### CHAPTER 62.—OATHS AND AFFIRMATIONS.\*

SECTION 1. [Administration].—Oaths and affirmations may be administered in all cases whatsoever by judges of the supreme court, judges of the district courts, clerk of the supreme court, clerks of the district courts within their respective districts, and by probate judges, justices of the peace, and notaries public, within their respective counties.

#### CHAPTER 63.—OCCUPYING CLAIMANTS.†

SECTION 1. [Improvements paid for before eviction].—That in all cases where any occupying claimant, being in quiet possession of any lands or tenements, for which such person can show a plain and connected title, in law or equity, derived from the records of some public office; or being in quiet possession of, and holding the same by deed, devise, descent, contract, bond or agreement, from and under any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded; or by being in quiet possession of, and holding the same under sale on execution against any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded, or being in possession of and holding any land under any sale for taxes, authorized by the laws of this state, or the laws of the territory of Nebraska, or any person in quiet possession of any land, claiming title thereto, and holding the same in good faith under a deed or sale made by executors, administrators, or guardians, or by any other person or persons in pursuance of any order of court, or decree in chancery where lands are or have been directed to be sold, and the purchaser or purchasers thereof have obtained title thereto and possession of the same without any fraud or collusion on his, her, or their part, shall not be evicted or turned out of possession by any person or persons, who shall set up and prove an adverse and better title to said lands, until said occupying claimant, his, her, or their heirs, shall be fully paid the value of all lasting and valuable improvements made on said land by such occupying claimant, or by the person or persons under whom he, she, or they may hold the same previous to receiving actual notice, by the commencement of suit on such adverse claim, by which such eviction may be effected, unless such occupying claimant shall refuse to pay the person so getting up and proving an adverse and better title, the value of the land without the improvements made thereon as aforesaid, upon the demand of the successful claimant or his heirs hereinafter provided. [G. S. § 1, 500.]

SEC. 2. [Occupants under tax title].—That the title by which the successful claimant succeeds against the occupying claimant, in all cases of lands sold for taxes, by virtue of any of the laws of this state or the laws of the territory of Nebraska, shall be considered an adverse and better title under the provisions of the first section, whether it be the title under which the taxes were due, and for which said land was sold, or any other claim or title whatever; and the occupying claimant holding possession of lands sold for taxes as aforesaid, having the deed of a county treasurer for such sale for taxes, or a certificate of sale of said land from a collector of taxes or county treasurer, or shall claim under the person or persons who hold such deed or certificate, shall be considered as having sufficient title to said land to demand the value of improvements under the provisions of the first section of this act.

\*NOTE.—Chap. XXXIX, R. S. 274. Chap. 50 G. S. 499.

†NOTE.—"An act for the relief of occupying claimants of lands." Chap. 51, G. S. 500. Took effect May 1 1873.

**SEC. 3. [Entry of claim—Jury.]**—That the court rendering judgment in any case provided for by this act, against the occupying claimant, shall at the request of either party cause a journal entry thereof to be made and thereupon a jury shall be impaneled by the court in the usual manner provided by law in civil causes.

**SEC. 4. [Duty of jury.]**—That the jury impaneled as above shall immediately proceed to view the premises in question, and then and there on oath or affirmation assess the value of all lasting and valuable improvements made as aforesaid on the lands in question, previous to the party receiving actual notice as aforesaid of such adverse claim, and shall also assess the damages, if any, which the said land may have sustained by waste, together with the net annual value of the rents and profits which the occupying claimant may have received from the same, after having received notice of the plaintiff's title by the service of process, and deduct the amount thereon from the estimated value of such lasting and valuable improvements, and said jury shall also assess the value of the land in question at the time of rendering judgment as aforesaid, without the improvements made thereon, or damages sustained by waste as aforesaid.

**SEC. 5. [Return of jury—New valuation.]**—That the jury shall sign and seal their respective assessments and valuation aforesaid, and deposit the same with the clerk of the court, at such time as the court may direct; and if any person shall think himself or herself aggrieved by any such assessment or valuation aforesaid, he or she may apply to the court at the term to which the proceedings are returned; and said court may upon good cause shown, set aside such assessment or valuation, and order a new valuation and impanel a new jury as hereinbefore provided, [and] shall proceed in the same manner hereinbefore directed.

**SEC. 6. [Judgment for plaintiff—Mesne profits barred.]**—That if the jury shall report a sum in favor of the plaintiff or plaintiffs in ejectment on the assessment and valuation of the valuation and lasting improvements, and the assessment of damages for waste, and the net annual value of the rents and profits, the court shall render a judgment therefor without pleadings and issue execution thereon as in other cases; or if no excess be reported in favor of the plaintiff or plaintiffs, then in either case the plaintiff or plaintiffs in ejectment shall be thereby barred from having or maintaining any action for *mesne* profits.

**SEC. 7. [Rights of successful claimant.]**—That if the jurors shall report a sum in favor of the occupying claimant or claimants on the assessment and valuation of the valuable and lasting improvements, deducting therefrom the damages, if any, sustained by waste, together with the net annual value of the rents and profits which the defendant or defendants may have received, after the commencement of the action of ejectment as aforesaid, the successful claimant or his heirs or the guardian of such heirs, they being minors, may at his, her, or their election, either demand of the occupying claimant the value of the land without improvements, so as aforesaid assessed, and tender a deed of the land in question to the occupying claimant; or he, she, or they, may pay the occupying claimant the sum allowed by the jury in his favor within a reasonable time, as the court shall allow.

**SEC. 8. [Same—Writ of possession.]**—That if the successful claimant or his heirs, or the guardians of such heirs, they being minors, shall elect to pay and do pay to the occupying claimant the sum so reported in his favor by the jury, within such reasonable time as the court have allowed for the payment, then a writ of possession shall issue in favor of said successful claimant, his heirs or the guardians of such heirs.

**SEC. 9. [Same.]**—That if the successful claimant, his heirs, or the guardians of such heirs, they being minors, shall elect to receive the value of the lands, without improvements so as aforesaid assessed to be paid by the occupying claimant within such reasonable time as the court may allow, and shall tender a general warranty deed of the land in question conveying such adverse and better title,



within the said time allowed by the court for the payment of the money in this section mentioned, and the occupying claimant shall refuse or neglect to pay said money (the value of the land without improvements) to the successful claimant, his heirs or their guardians, within the time limited as aforesaid, then a writ of possession shall be issued in favor of said successful claimant, his heirs or their guardians.

**SEC. 10. [Rights of occupying claimant.]**—That the occupying claimant, or his heirs, shall in no case be evicted from the possession of such land unless, as is provided in the two preceding sections, where an application is made for the value of improvements under this law; and in all cases where the occupying claimant or claimants, or his or their heirs, shall have paid into court the value of the lands in question, without improvements, within the time allowed by the court (where an election has been made by the successful claimant or claimants, his or her heirs, or guardians as aforesaid to surrender any tract of land under the provisions of this act), such occupant or his heirs may at any time after such payment shall have been made, file his, her, or their petition in the court where such judgment of eviction was obtained, and obtain a decree for the title of such land, if the same had not been previously conveyed to such occupant as aforesaid.

**SEC. 11. [Repealed Laws 1867, 12 Sess. Ter. 14.]**

**SEC. 12. [Took effect May 1, 1873.]**

## CHAPTER 64.—OILS.

**SECTION 1. [Testing oils.]**—That it shall be unlawful for any person or persons to offer for sale, for illuminating purpose, as agent, or otherwise, any mineral or petroleum oil, or any oil fluid or substance which is a product of petroleum, or into which petroleum or any product of petroleum enters, or is found as a constituent element, until after he, or they have tested the same in the manner following, to-wit: By taking not less than half a pint of the oil, fluid, or substance to be tested, and placing the same in a small vessel, in which there is no other substance, of such dimensions that the surface of the oil, fluid, or substance shall not exceed four square inches in area, and placing a Fahrenheit's thermometer in said oil, fluid or substance in said vessel, in such manner that the thermometer will indicate the temperature of the oil, fluid, or substance being tested, which shall then be gradually heated at a rate of not less than two degrees per minute, Fahrenheit, to a temperature at which said oil, fluid, or substance will emit a gas, or vapor that will ignite by bringing the flame of a lighted match, or other burning taper, in contact with the surface of the article being tested, with such frequency and in such a manner as to ascertain the exact temperature by said thermometer at which said fluid, oil, or substance will emit a gas that will ignite, and if it will emit a gas or vapor that will ignite at any temperature below one hundred and ten degrees, Fahrenheit, then it is hereby declared to be dangerous, and it shall be unlawful to sell or offer the same for sale. [1875 § 1, 27.]

**SEC. 2. [Penalty for selling.]**—That any person or persons who shall offer for sale for illuminating purposes, any oil, fluid, or substance mentioned in the first section of this act, until after he, or they, have tested, or caused the same to be tested, as prescribed by this act, or who shall offer for sale for illuminating purposes, any of said articles that will emit a gas, or vapor, that will ignite at any temperature below one hundred and ten degrees, Fahrenheit, under the test prescribed in this act, he or they shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than one hundred dollars, or imprisoned in the jail of the county not exceeding twenty days, or both, at the discretion of the court, and shall pay the costs of the prosecution.

**SEC. 3. [Same.]**—That if any person or persons, manufacturer, refiner, or wholesale dealer of any oil, fluid, or substance mentioned in the first section of this

act, as agent, or otherwise, shall sell for illuminating purposes, any oil, fluid, or substance mentioned in said section, that will emit a gas or vapor that will ignite at any temperature under one hundred and ten degrees Fahrenheit, under the test in this act prescribed, he, or they, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding one thousand dollars, or imprisonment in the jail of the county not exceeding twenty days, or both, at the discretion of the court trying the case, and shall pay the costs of prosecution.

SEC. 4. [Same.]—That if any person or persons, shall sell for illuminating purposes, and in a quantity of less than one barrel at a single sale, any oil, fluid, or substance, that will emit a gas or vapor, that will ignite at any temperature below one hundred and ten degrees Fahrenheit under the test prescribed by this act, he, or they, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than twenty-five, nor more than two hundred dollars, or imprisonment in the jail of the county not exceeding ten days, or both, at the discretion of the court, and shall pay the costs of prosecution.

SEC. 5. [Damages.]—That if any person shall sustain damage to his property, or injury to his person, by reason of a violation of any of the provisions of this act by another person, the person guilty of violation shall be liable to the person injured for all damages sustained thereby, and in case any person violating the provisions of this act, shall, by such violation, cause the death of another, he shall be guilty of manslaughter, and on conviction thereof, shall be punished according to the provisions of the section of the criminal statute defining that crime.

SEC. 6. [Contracts, when void.]—That any and all contracts made in violation of the provisions of this act are hereby declared to be void, and the vendor may return the oil, fluid, or substance purchased, at the expense of the vendor, and recover from the vendor all that he has paid therefor, including all charges for transportation, and all other damages resulting from said sale.

SEC. 7. [Took effect May 1, 1875.]

#### CHAPTER 65.—PARTNERSHIPS.

SECTION 1. [Limited—Formation.]—That limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business within this state, may be formed by two or more persons upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this chapter shall not be construed to authorize any such partnership for the purpose of banking or effecting insurance. [G. S. 504.]

SEC. 2. [Partners—General—Special—Liability.]—Such partnerships may consist of one or more persons who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law, and of one or more persons who shall contribute in actual cash payments, or in goods, wares, merchandise, machinery, and fixtures, a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the co-partnerships beyond the fund so contributed by him or them to the capital stock.

SEC. 3. [Business transactions.]—The general partners only shall be authorized to transact business and sign for the co-partnership and to bind the same.

SEC. 4. [Certificate of formation.]—The persons desiring to engage in the formation of such partnerships, shall make and severally sign a certificate which shall contain: 1. The name of the firm under which such partnership is to be conducted. 2. The general nature of the business intended to be transacted. 3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence. 4. The amount of capital in money or in goods, wares, merchandise, machinery and fixtures, which each special partner shall have

NOTE.—"An act to authorize limited partnerships in the state of Nebraska." Chap. 52. G. S. 504. Took effect March 1, 1873.

contributed to the common stock. 5. The period at which the partnership is to commence, and the period at which it shall terminate.

**SEC. 5. [Same—Acknowledgment.]**—The certificate shall be acknowledged by the several persons signing the same before a notary public, or other officer authorized by law to take the acknowledgment or proof of the execution of conveyances of land, and such acknowledgment or proof shall be made and certified in the same manner as the acknowledgment or proof of conveyances of land may be made or certified.

**SEC. 6. [Same—Filing.]**—The certificate so acknowledged and certified shall be filed in the office of the county clerk of the county in which the principal place of business of the partnership shall be situated, and shall be recorded by such clerk in a book to be kept for that purpose, and in case any such partnership shall have a place of business in more than one county in the state, then a copy of such certificate, so acknowledged and certified by the clerk of the county where the original was filed, shall in like manner be filed and recorded in each other county in which such partnership shall have a place of business, in the office of the clerk of said county.

**SEC. 7. [Same—Capital—Affidavit.]**—At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate, or value thereof in goods, wares, merchandise, machinery, and fixtures, have been contributed by each of the special partners to the common stock, and actually and in good faith paid into the general fund.

**SEC. 8. [When formed.]**—No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed, as before directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

**SEC. 9. [Terms—Publication.]**—The partners shall immediately publish the terms of the partnership, when registered as above provided, for at least six consecutive weeks, in two newspapers to be designated by the clerk of the county in which the registry shall be made, and if no newspapers are published in the county, then the same shall be published in the judicial district in which their business shall be conducted, and if such publication be not made, the partnership shall be deemed general.

**SEC. 10. [Same—Filing.]**—Affidavits of the publication of such notice by the printer, publisher, or foreman of the newspapers in which the same shall be published, may be filed with the clerk directing the same, and shall be evidence of the facts therein contained.

**SEC. 11. [Renewals.]**—Every renewal or continuance of such partnership beyond the time originally fixed for its duration, shall be certified, acknowledged, and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

**SEC. 12. [Alteration in terms—Dissolution.]**—Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, and every such partnership which shall in any manner be carried on after any such alteration shall have been made, shall be deemed a general partnership unless renewed as a special partnership according to the provisions of this act.

**SEC. 13. [Firm name.]**—The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, and if the name of any special partner shall be used in such firm he shall be deemed and held liable as a general partner.

**SEC. 14. [Actions, how brought.]**—Actions in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

**SEC. 15. [Decreasing special capital—Interest.]**—No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him from the firm, or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive such rate of interest on the sum so contributed by him, as may be agreed upon in the articles of co-partnership, not exceeding twelve per centum per annum, if the payment of such interest shall not reduce the original amount of such capital, and after the payment of such interest, any profits shall remain to be divided, he may also receive his proportion of such profits.

**SEC. 16. [Same—Liability.]**—If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital with interest.

**SEC. 17. [Business by special partner.]**—A special partner may, from time to time, examine into the condition and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise. If he shall interfere contrary to these provisions, he shall be deemed in law a general partner, and accountable as such.

**SEC. 18. [Partners' accountability.]**—The general partners shall be liable to account to each other, and to the special partners, for their management of the concern, as other partners are now liable by law.

**SEC. 19. [Same—Fraud.]**—Every partner who shall be guilty of any fraud in the affairs of the partnership, shall be liable, civilly, to the party injured to the extent of his damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

**SEC. 20. [Fraudulent conveyance—Insolvency.]**—Every sale, assignment or transfer of any of the property or effects of such partnership when insolvent, or in contemplation of insolvency, or after or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien created, or security given by such partnership, under the like circumstances and with the like intent, shall be void as against the creditors of such partnership.

**SEC. 21. [Same.]**—Every such sale, assignment, or transfer, of any of the property or effects of a general or special partner, made by such general or special partner, when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own or of the partnership, a preference over creditors of the partnership, and every judgment confessed, lien created, or security given by any such partner under the like circumstances and with the like intent, shall be void as against the creditors of the partnership.

**SEC. 22. [Same—Liability—Special partner.]**—Every special partner who shall violate any provision of the last two preceding sections, or who shall concur in or assist to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

**SEC. 23. [Insolvent—Special partner creditor.]**—In case of the insolvency or bankruptcy of the partnership, no special partner shall under any circumstances, be allowed to claim as a creditor, until the claims of all the creditors of the partnership shall be satisfied.

**SEC. 24. [Dissolution.]**—No dissolution of such partnership, by the acts of the parties, shall take place previous to the time specified in the certificate of

its formation or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the office of the clerk of the county in which the original certificate was recorded, and published once in each week for four weeks in a newspaper printed in each of the counties, or if none are printed in the county, then in the judicial district where the partnership may have places of business.

SEC. 25. [Fees—County clerk.]—The clerk of the county shall be entitled to receive the same fees for recording the articles of co-partnership, and the papers connected therewith, that he is now entitled to receive for recording deeds.

SEC. 26. [Took effect Mar. 1, 1873.]

SEC. 27. [Unincorporated companies—Certificate.]—That any association of persons doing business in any county of this state under a firm, partnership or corporate name, and not incorporated under the laws of this state, shall have recorded in the office of the county clerk of the county where the place of business of said association is located, a certificate signed by each member of such association, showing: *First.* The firm, partnership or corporate name of such association. *Second.* The general nature of the business thereof and the principal place of doing business; and *Third.* The full name and residence of each individual member of such association. [1875 § 1, 178.]

SEC. 28. [Same—Record—Evidence.]—The county clerk of each county shall keep a book for the aforesaid purpose of recording said certificates and shall receive the same fees therefor as for recording other instruments, and such record or a certified transcript thereof shall be *prima facie* [evidence] in any court in this state of any of the facts therein set forth. [Id. § 2.]

SEC. 29. [Violation of act—Penalty.]—Any person who shall for the space of twenty days fail, neglect, or refuse to comply with any of the provisions of this act, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars and any fine so adjudged against any member of any association may be collected by execution from the property of such association. [Id. § 3.]

SEC. 30. [Took effect Sept. 1, 1875.]

## CHAPTER 66.—PATENT RIGHTS.

SECTION 1. [Proof by sellers.]—That it shall be unlawful for any person to sell or barter, or offer to sell or barter, in any county within this state, any patent right, or any right claimed by such person to be a patent right, without first making the affidavit and proof hereinafter provided for. [G. S. 508.]

SEC. 2. [Same—Examination—Certificate.]—Any person or persons desiring to or intending to sell or barter any patent right, or any right which such person shall claim to be a patent right, shall, before offering to sell or barter the same, in any county within this state, submit to the probate judge of such county, for his examination, the letters patent, or a duly authenticated copy thereof, and his authority to sell or barter the right so patented, and shall, at the same time swear or affirm to an affidavit before such judge, stating the name, age, place of residence, and former occupation of the applicant, and if an agent, the name, occupation and residence of his or her principal; which affidavit shall be in writing, and shall be filed and preserved in the office of said judge; and if such judge be satisfied that the right so entitled to be sold or bartered has been duly patented, and that the letters patent have not expired, or been revoked or annulled, and that the applicant is duly empowered to sell the same within such county, or any precinct or part thereof, then such probate judge shall record every such affidavit, the date of such letters patent, to whom the same were issued, and the designation or name of such patent right given therein,

SECS. 27-30. "An act providing for the recording of the names of all members of associations doing business under a firm, partnership or corporate names. Laws 1875, 178. Took effect Sept. 1, 1875.

\*NOTE.—"An act to regulate the sale of patent rights in the state of Nebraska and prevent frauds connected therewith." Chap. 53, G. S. 508. Took effect July 1 1873.

with the number thereof, in a book to be kept in his office, and he shall give copies of such record, with his certificate thereto, on demand, as other public records.

**SEC. 3. [Certificate—Exhibition.]**—Any person to whom such certificate may be issued shall exhibit the same to any person, on demand.

**SEC. 4. [Notes.]**—Any person who may take any note, or other obligation in writing, for which any patent right or right claimed by him or her to be patent right, shall form the whole or any part of the consideration, shall, at the time of the taking thereof, insert therein, in the body of the instrument, and above the signature thereof, in prominent and legible writing or print, the words, given for a patent right, and all such obligations or promises, if transferred, shall be subject to all defense, as if owned by the original promisee.

**SEC. 5. [Violation of fact—Penalty.]**—Any person who shall sell or barter, or offer to sell or barter, within this state, or who shall take any note, or other obligation, or promise in writing, for which any patent right shall form the whole or any part of the consideration, without complying with the requirements of this act, or who shall refuse to exhibit the certificate as required hereby, shall be deemed guilty of a criminal offense, and on conviction thereof, before any court of competent jurisdiction, shall pay a fine of not more than five hundred dollars, or be imprisoned in the jail of the proper county, not more than six months, or both, at the discretion of the court, and shall, moreover, be liable to the party injured, in a civil action for any damages sustained.

**SEC. 6. [Took effect July 1, 1873.]**

## CHAPTER 67.—PAUPERS.\*

**SECTION. 1. [Support.]**—Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person, if they, or either of them be of sufficient ability. And every person who shall refuse to support his or her father, grandfather, mother, grandmother, child or grandchild, sister or brother, when directed by the county commissioners of the county where such poor person shall be found, whether such relative shall reside in the same county or not, shall forfeit and pay to the county commissioners, for the use of the poor of their county, the sum of ten dollars for each and every month for which they or either of them shall fail or refuse, to be recovered in the name of the county commissioners, for the use of the poor aforesaid, before a justice of the peace or any other court having jurisdiction; *Provided*, That whenever any persons become paupers from intemperance or other bad conduct, they shall not be entitled to support from any relative except parent or child. [R. S. 274. G. S. 510.]

**SEC. 2. [Relatives to support.]**—The children shall first be called upon to support parents, if there be children of sufficient ability, and if there be none of sufficient ability, the parents of such poor person shall be next called upon, and if there be no parents nor children, the brothers and sisters shall be next called on, and if there be no brothers nor sisters, the grandchildren of such poor person shall next be called on, and then the grand parents; *Provided*, Married females, while their husbands live, shall not be liable to a suit.

**SEC. 3. [County relief.]**—When any such poor person shall not have any such relatives in any county in this state as are named in the preceding sections, or if such relatives shall not be of sufficient ability, or shall refuse to maintain such pauper, then the said pauper shall receive such relief as his or her case may require, out of the county treasury, in the manner hereinafter provided.

**SEC. 4. [Justices—Overseers—Physician.]**—The justices of the peace in each precinct shall be and they are hereby made overseers of the poor and

SEC. 4. If a note given for a patent right be executed in the ordinary form, omitting the words prescribed—a bona fide purchaser before maturity, etc., takes the same free from all equities between the original parties. 4 Neb. 517.

\*NOTE.—Chap. XL, R. S. 274. Chap. 34, G. S. 510.

are vested with the entire and exclusive superintendence of the poor in their respective precincts, excepting in cases of corporate towns or cities to which such superintendence and jurisdiction shall be by law granted; *Provided*, That the county commissioners of the several counties may employ a physician by the year to furnish such medical service as may be required by the poor of their county, excepting incorporate towns or cities as herein provided; *Provided, also*, That the salary of such county physician shall not exceed two hundred dollars in any one year. [Amended 1875, 89.]

**SEC. 5. [Overseer's duties—Custodian—Bond.]**—It shall be the duty of said overseers of the poor, within their respective precincts, to provide for all such persons as are unable to earn a livelihood in consequence of any bodily infirmity, idiocy, or other unavoidable cause, the necessaries of life, and in their discretion may confide such poor persons to some moral and discreet householder or householders in the county, of sufficient ability to provide for them. Every person to whom the care of any such poor person shall be entrusted, shall execute a bond to the county in which such poor person shall reside, conditioned that he or she will treat such poor person with humanity, and afford to him or her the necessary comforts of life fitted to his or her condition; said bond shall set forth the sum to be paid by said county for keeping such poor person.

**SEC. 6. [Overseer's report.]**—Said overseers shall, at each regular session of the board of county commissioners, make a full report of their actings and doings under this chapter, and return a list of all the poor within their respective precincts, specifying the age, sex, and infirmities of each.

**SEC. 7. [Overseer's expenses.]**—Upon making such report, it shall be the duty of the county commissioners to issue their warrants or drafts on the treasurer, for the payment of the expense necessarily incurred by the overseers of the poor in supporting such poor person.

**SEC. 8. [Custodian—Bond increased.]**—Any sum set forth in the bond executed to any county as aforesaid, may be lessened or increased at the discretion of the commissioners of said county, without affecting the validity of said bond.

**SEC. 9. [Custodian—Removal.]**—The county commissioners may, at any regular meeting, remove any poor person from the custody of any person or persons to whose care the overseers may have committed the keeping of such poor persons, without subjecting the overseers, or the county, to any claim for damages.

**SEC. 10. [Same—Labor.]**—The overseers, in fixing the amount to be paid for the keeping of any poor person, shall take into consideration the ability of the poor person to labor.

**SEC. 11. [Pauper—Where chargeable.]**—Any person becoming chargeable as a pauper, in this state, shall be chargeable as such pauper in the county in which he or she resided at the commencement of the thirty days immediately preceding such person becoming so chargeable.

**SEC. 12. [Non-resident.]**—If any person shall become chargeable in any county in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of by the proper authority of the county where he or she may be found; and it shall be the duty of the clerk of the county commissioners to send a notice by mail to the clerk of the county commissioners of the county in which such pauper resided, as before stated, that such person has become chargeable as a pauper, and requesting the authorities of said county to remove the said pauper forthwith, and to pay the expense accrued in taking care of him or her.

**SEC. 13. [Same.]**—If said pauper, by reason of sickness or disease, or by neglect of the authorities of the county in which he or she resides, or for any other sufficient cause, cannot be removed, then the county taking charge of such individual may sue for, and recover from the county to which said individual belongs, the amount expended for and in behalf of such pauper, and in taking care of the same.

**SEC. 14. [Non-resident taken sick.]**—Whenever any non-resident, or

any other person not coming within the definition of a pauper, shall fall sick in any county in this state, not having money or property to pay his or her board, nursing, and medical aid, it shall be the duty of the overseers of the poor of the precinct where such person shall be, to furnish such assistance to such person as they shall deem necessary; and if any such person shall die, said overseers shall provide all necessary means for a decent burial of such person.

SEC. 15. [**Residence explained.**].—The term "residence," mentioned in this chapter, shall be taken and considered to mean the actual residence of the party or the place where he or she was employed; or in case he or she was in no employment, then it shall be considered and held the place where he or she made it his or her home.

SEC. 16. [**Importing paupers—Penalty.**].—If any person shall bring or leave any pauper or paupers in any county in this state, wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county, before any justice of the peace, in the proper county.

SEC. 17. [**Poor houses—Establishment.**].—The county commissioners in each county are authorized, whenever they shall see fit so to do, to establish a poor house.

SEC. 18. [**Site.**].—The county commissioners are hereby authorized to take in the county, by grant, devise, or purchase, any tract of land not exceeding six hundred and forty acres, for the purposes of said poor house.

SEC. 19. [**Donations—Taxes.**].—Said commissioners are hereby empowered to receive donations to aid in the establishment of such poor house, and also empowered from time to time, as they shall see fit, to levy and collect a tax, not exceeding one per cent. on the taxable property in the county, and to appropriate the same to the purchase of land, not exceeding the aforesaid six hundred and forty acres, and to erect and furnish buildings suitable for a poor house, and to put in operation and to defray the actual expenses of said poor house, should the labor of the inmates be inadequate thereto.

SEC. 20. [**Agents.**].—Said county commissioners are hereby authorized to appoint and employ such agents and other persons as may be necessary to establish and put into operation such poor house.

SEC. 21. [**Overseers discontinued.**].—Whenever the county commissioners of any county shall enter upon their records, that they have established a poor house, and that said poor house is ready for the reception of the poor of said county then the authority conferred upon the overseers of the poor shall cease to be in force in said county: *Provided, however,* That if there be any particular case or cases which the court should deem prudent to put out under the provisions of this chapter, they may do so, making a proper entry of the circumstances upon their records.

SEC. 22. [**Title to poor house.**].—The title of the property authorized to be acquired by this chapter, for the purpose of said poor house shall be made in the county.

SEC. 23. [**Poor house and farm—Appropriations.**].—The county commissioners of any county in this state may, at any regular meeting, if they at any time, shall deem it to the interest of said county, appropriate, out of any fund appropriated to said county for any purpose, or other money belonging to said county, any sum not exceeding two thousand five hundred dollars, for the purpose of purchasing a farm, and erecting thereon suitable buildings for a poor house for said county, as contemplated in sections seventeen, eighteen, and nineteen of this chapter.

SEC. 24. [**Clothing for inmates of institutions.**].—That whenever any

SEC. 23. In the execution of this power the commissioners cannot give promissory notes secured by mortgage in payment of the poor farm. 2 Feb. 1883.

SEC. 24. "An act providing for furnishing clothing to certain inmates of public charitable institutions." Laws 1875, 177. Took effect Feb. 24, 1875.



person who may be an inmate of the Nebraska state institute for the deaf and dumb or any other public charitable institution shall be unable to provide suitable clothing for himself or herself, and shall have no parent or legal guardian able and legally bound so to do, it shall be the duty of the county commissioners of the county where such person last resided before entering or applying for admission into such institution, to adjudge and declare such person a pauper, and thereupon the proper officers of such institution shall provide suitable clothing for such person, and send the bill thereof to the aforesaid county commissioners, who shall forthwith audit and allow the same and cause a warrant therefor to be drawn upon the general fund of such county in favor of said officers of such institution. [1875 § 1, 177.]

#### CHAPTER 68.—PRINTING.

**SECTION 1. [State printing—Proposals—Advertisement.]**—The auditor, treasurer, and secretary of state, shall, during the first week in November, eighteen hundred and sixty-eight, and every second year thereafter, give notice in four different newspapers, published in different sections of the state, that sealed proposals indorsed, "proposals for state printing," will be received at the office of the secretary of state until the thirtieth day after the first publication of said notice, for the execution of the several branches of the state printing, in separate contracts, as hereinafter specified, for the term of two years from the fourth Tuesday in December, next thereafter. [1867 § 1, 64.]

**SEC. 2. [Proposals how made.]**—The proposals hereinbefore provided for, shall state, distinctly and specifically, the price per thousand ems for the composition of all bills, resolutions, and other matter that may be ordered to be printed in bill form; all pamphlets or reports ordered to be printed in pamphlet form; the journals of the senate and house of representatives; the general laws; the local laws; and volumes of legislative documents; the price per thousand ems for composition, and the price per quire for press work of all blanks and circulars for the executive offices; and the price per quire of the paper to be furnished by the bidder for each of the kinds of work provided for, at which the bidder is willing to take the contract bid for; and in such notice as is prescribed in this act, the secretary, auditor, and treasurer shall publish an abstract of this law, stating distinctly each item to be bid for, the character of the work, and the mode of allowing compensation for the same; and the said secretary, auditor and treasurer, or any two of them, shall within two days after the expiration of said notice, proceed to open all such proposals by them received, and they shall, on careful examination and strict computation, give the contract for each of the hereinafter named branches of the state printing, to the lowest responsible bidder therefor, who will comply with all the provisions of this act; *Provided*, That if two or more bidders shall propose for the same contract, and the proposals of one be lower on composition, and the proposals of another be lower on press-work or paper, then the secretary, auditor, and treasurer, or any two of them, taking to their assistance a disinterested practical printer, shall proceed to compute the same, by taking as a basis, the aggregate number of ems, the aggregate numbers of tokens of press work, and the aggregate number of quires of paper, of the same kind of printing for the last session of the legislature preceding, and they shall give the contract to the lowest bidder under the computation aforesaid; *And provided, further*, That nothing herein contained shall be construed so as to prevent the same person from becoming contractor for two or more branches of the public printing, if he shall be the lowest bidder therefor; but the said secretary, auditor, and treasurer shall in no case whatever receive or take into consideration the bid of an irresponsible person; *Provided, however*, No person shall be deemed irresponsible, who shall tender to the executive officers aforesaid, along with his bid, satisfactory assurance, subscribed by his proposed surety, that he will execute the bonds required by the eleventh section of this act.

**NOTE.**—"An act to provide for state printing." Laws 1867, 64. Chap. 56, G. S. 515. Took effect June 18, 1867.

**SEC. 3. [Separate contracts.]**—The printing of all bills for the two houses of the legislature, together with such resolutions and other matters as may be ordered by the two houses, or either of them, to be printed in bill form, shall be let in one contract. The printing of the journals of the senate and house of representatives, and of such reports, communications and other documents as enter into and make a part of the journals, shall be let in another contract. The printing of all reports, communications, and other documents, that may be ordered to be printed in pamphlet form by the legislature, or either branch thereof, except such as enter into and make a part of the journals, together with the volume of public documents, shall be let in another separate contract. The printing of the general and local public laws, and such joint resolutions as may be directed by the legislature to be printed therewith, shall be let in another separate contract. And the printing of all blanks and circulars necessary for the use of the executive officers of state, shall be let in another separate contract.

**SEC. 4. [Legislative bills.]**—The bills shall be printed in folio foolscap form, in small pica type, each page to contain not less than twenty-five lines of solid matter of the usual length, and the lines shall be successively numbered, with a blank only in each space between the lines; and in counting the composition upon bills, the same shall be measured as solid matter, and every necessary fraction of a page shall be counted as a full page, but no entire blank page shall be counted or charged for.

**SEC. 5. [Legislative journals.]**—The journals of the senate and house of representatives shall be printed in super royal octavo form, on neat long primer type, and in as close and compact order as is consistent with good workmanship, without unnecessary blanks or broken pages, the pages to be of the same size as those of the journals of the territorial legislature.

**SEC. 6. [Public documents.]**—The volumes of public documents and all reports, communications and other documents ordered to be printed in pamphlet form, shall be printed on the same kind of type, and the pages to be of the same size as specified for the journals in the preceding section, said documents to be printed in pamphlet form, shall be printed in close compact order, without title pages, unnecessary blanks, or open spaces; the volumes of public documents shall contain nothing that shall have been inserted in the laws or journals of the same year except the annual report of the auditor and treasurer; and the various reports, communications, and other documents proper to be inserted therein shall follow each other in as close compact order as is consistent with good workmanship, without the intervention of unnecessary blanks, or separate title, or half title pages; and the paging thereof shall be consecutive, and at the conclusion, there shall be an index, to be made out by the printer, referring to the particular page at which each separate document commences. In all cases where any document is printed in pamphlet form by order of the legislature, or either branch thereof, by the contractor for the printing of the volumes of public documents, which shall also be inserted in the volumes of public documents, and in all cases where any document is printed in pamphlet form by the contractor for the printing of the journals, which shall also be printed in the journals, but one charge shall be made or allowed for the compensation thereof.

**SEC. 7. [Laws.]**—The laws shall be printed in royal octavo form, on good small pica type, the pages to be of the same size and form as those in the laws of the session of the tenth session of the territorial legislature of Nebraska, with similar marginal notes, and index to the general laws.

**SEC. 8. [Composition—Measurement.]**—In the composition of all pamphlets, laws, journals, and volumes of public documents, every necessary

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SEC. 7. Under a contract to furnish "paper super royal, forty pounds to the ream, sheets folded octavo, (four times,) and sheets stitched," where the paper furnished was of the kind known as royal, in sheets 19 by 24 inches, and weighing 20 pounds to the ream, held, that the contract required paper 24 by 38 inches in size, weighing 40 pounds to the ream and should contain sixteen leaves and thirty-two pages of printed matter to be sheet printed on both sides, and that each sheet for folding and stitching should contain sixteen pages. 8 Neb. 310.

fraction of a page, shall be counted as  $\frac{1}{2}$  full page, but no entire blank page shall be counted or charged for; and if, in any branch of the printing, tabular statements occur, which it shall be impracticable to print on the ordinary size pages, the same shall be printed on tabular sheets of the necessary size, and the amount of composition on the same, shall be ascertained by measuring the printed surface, and thereby ascertaining the number of ems; and for all rule and figure work, double price for composition shall be allowed, the same to be ascertained by strict measurement and count. But one charge shall be made for the composition of all documents ordered to be printed by both branches of the legislature, and no charge or allowances shall be made for composition when extra and additional copies shall be ordered printed.

SEC. 9. [**Presswork—Token.**]—In counting and charging the presswork, whether on bills, journals, laws, pamphlets, or volumes of public documents the token shall consist of one hundred and twenty-five sheets, printed on both sides, or two hundred and fifty sheets printed on one side only.

SEC. 10. [**Delivery by contractor.**]—Each contractor for any branch of the state printing, shall deliver over to the secretary of state, or on his order, in the sheet, all copies ordered to be printed, in good order.

SEC. 11. [**Contractor's bond.**]—It shall be the duty of the secretary of state to give immediate notice to the successful bidder, that his proposals have been accepted and each successful bidder shall enter into bonds payable to the state of Nebraska, in the sum of not less than two thousand nor more than five thousand dollars, for each and every branch of the public printing so awarded to him, with at least two good and sufficient sureties, conditioned for the faithful performance, pursuant to this act, of that branch or branches of the printing to which he has been adjudged the successful bidder; and if he shall fail so to give bond within the time allowed, then the contract shall be given to the next lowest bidder, who will give bond as aforesaid.

SEC. 12. [**Folding—Stitching—Contracts.**]—The folding of all bills, resolutions, pamphlets, or documents, ordered to be printed, together with the stitching of the same, and the paper covering of all documents ordered by the legislature, or either branch thereof, to be covered, shall be let in one contract; and the folding, stitching, and binding of the laws, journals, and volumes of public documents, shall be let in another contract.

SEC. 13. [**Same—How let.**]—The secretary, auditor, and treasurer, at the same time, and in the same manner as prescribed in the first section of this act, shall give notice that sealed proposals will be received for the folding and stitching of all bills, resolutions, pamphlets or documents ordered printed, and the paper covering of all documents ordered to be covered; and for the folding, stitching, and binding of the laws, journals, and volumes of public documents, which proposals shall specify the rate per hundred sheets for folding, the rate per hundred copies for folding, the rate per hundred copies for stitching all bills, resolutions, pamphlets, or documents, the rate per hundred copies for paper covering all documents ordered to be covered, and the rate per hundred copies for binding the laws, journals, and volumes of public documents at which the contractor is willing to do the same; and each successful bidder, to whom the contracts or either of them may be awarded, shall enter into bond in the sum of one thousand dollars, in the same manner as is prescribed in the eleventh section of this act, for the faithful performance of the same.

SEC. 14. [**Style of binding.**]—The binding of the laws, journals, and other volumes of public documents shall be in the same style and of the same material as the volumes of laws of the territorial legislature of the tenth session.

SEC. 15. [**Specimens preserved.**]—The secretary of state shall keep in his office, for inspection, a specimen of each kind, style, and quality of the work required to be done and material to be used in the several cases; and the work done or material used, shall in all cases be equal in quality to the specimens so kept by the secretary of state.

SEC. 16. [**Half sheets.**].—In counting the folding and stitching of all bills, resolutions, pamphlets, or documents, no half sheet shall be counted, charged for, or allowance made.

SEC. 17. [**Collating — Drying — Pressing.**].—Folding, stitching, and binding shall include the collating, drying, and pressing, and no charge or allowance shall be made for collating, drying, and pressing.

SEC. 18. [**Contractor's accounts.**].—Each contractor for any branch of the public printing, shall file and preserve one copy of each document or other matter, by him printed for the state, which file he shall deposit, together with his accounts for printing, with the secretary of state, on or before the fourth Tuesday of December annually, in which account shall be specifically stated the various jobs performed; the number of ems composition in each; the extra charge, if any, for rule and figure work in each; the number of tokens of press-work in each; designating whether ordered by the senate, the house, or jointly by both, or by other officers or agents of the state, together with the kind and quantity of paper used for each job

SEC. 19. [**Binder's accounts.**].—Each contractor for the folding, stitching, covering, and binding, shall file and preserve one copy of every document, or other matter, by him folded, stitched, or bound, which file he shall deposit together with his accounts for the same, with the secretary of state, on or before the fourth Tuesday of December, annually, which account shall specifically state each item, as provided for by the thirteenth section of this act, and the number of copies of each bill, resolution, pamphlet or document folded, stitched, or covered, and the number of copies of laws, journals, and documents bound.

SEC. 20. [**Accounts—Examination.**].—On the filing of any account and vouchers, under the two last preceding sections, the secretary of state, auditor, and treasurer, shall carefully examine such accounts, together with the vouchers therefor, and the orders for the same, and if any errors be found in such account by such examining officers, they shall immediately correct the same; and if they shall find any unnecessary blanks or increased number of pages, caused by stretching out of matter, or other devices of the printer, they shall deduct from the account of the contractor, double the amount of composition and press work charged for such unnecessary blanks or increased number of pages; and if any error shall be committed in any branch of the printing aforesaid, by which the sense or meaning may be altered, such examining officers shall deduct from the account of the contractor, by whom the error was committed, the amount of composition to which he would have been entitled for the composition and press work of the whole sheet in which such error shall be found; but the secretary, auditor, and treasurer, shall in no case allow constructive charges, or any other than is specifically named in this act.

SEC. 21. [**Accounts—Payments.**].—After any account, as aforesaid, shall have been examined by the proper officers, and all errors and overcharges corrected, and proper deductions made therefor, pursuant to the foregoing section, said account shall be certified to be correct by said examining officers, or any two of them; and when any account shall be so audited and certified, the auditor shall draw a bill upon the treasury for the amount thereof, payable out of any money appropriated for that purpose.

SEC. 22. [**Neglect of contractor.**].—The contractor for the printing of bills, resolutions, or other matter to be printed in bill form, shall promptly, and without delay, execute all orders of the legislature, or either branch thereof, for the printing of all bills and resolutions, and for each failure to complete said printing within twenty-four hours after receiving the order for the same, the contractor shall forfeit and pay a penalty of ten dollars to be deducted from his account at settlement; and all contractors under the provisions of this act, shall promptly, and without unnecessary delay, execute all orders issued to them by the legislature, or either branch thereof, or the executive officers of the state; and the laws, journals, and volumes of public documents shall be printed and delivered to the

contractor for the folding, stitching, and binding, on the order of the secretary of state, within sixty days after the adjournment of the legislature, and said contractor shall, within thirty days after the receipt thereof, execute the folding, stitching and binding, and deliver to the secretary of state, the volumes so bound, under the penalty of a forfeiture of their bonds; *Provided, however,* That the said secretary of state, auditor, and treasurer, may, on good cause shown by either of the contractors, extend the time, not exceeding ten days for the execution of their several contracts.

**SEC. 23. [Laws and journals—Copy.]**—The secretary of state shall furnish a true and accurate copy of the laws and journals, as they may be demanded by the printer thereof, and the clerks of the respective branches of the legislature shall each furnish to the printer who is bound by his contract to print the same, copies of the journals, bills, reports, and other papers and documents, without unnecessary delay, and no contractor shall be accountable for any delay, occasioned by the want of such copy.

**SEC. 24. [Laws—Arrangement.]**—It shall be the duty of the secretary of state to classify and arrange for publication, the laws, joint resolutions and memorials, passed at each session, and to make out a full index and marginal notes to the laws as fast as shall be necessary. The signatures of the speaker of the house, president of the senate and governor, shall not be printed at the end of each law and chapter, but only at the end of the volume. The date of approval by the governor shall be affixed to each law, and there shall be prefixed to each volume of laws published the name and residence of the several state officers, the senators and members of the house of representatives, and the presiding officers and clerks of both branches of the legislature at the time of passing such laws.

**SEC. 25. [Failure of contractor—New proposals.]**—In case any contractor, under the provisions of this act, shall fail to comply with the stipulations of his contract, it shall be the duty of the secretary of state, auditor, and treasurer to immediately advertise for proposals, for the unperformed work provided for in the said contract, in accordance with the provisions of this act, so far as they may be applicable.

## CHAPTER 69.—PUBLIC LANDS.

**SECTION 1. [Records.]**—That it shall be and is hereby made the duty of the governor, immediately after the passage of this act, to cause true copies of all communications from the secretary of the interior department of the United States, now on file in any department of this state, in or by which any lands or selections thereof have been confirmed or certified to this state under or by virtue of any grant or act of congress, to be prepared and certified under the state seal, and recorded in each of the counties of this state in which any of the lands in such copy described are situated. [1872, 7. G. S. 868.]

**SEC. 2. [Same—Future communications.]**—That whenever any communication shall hereafter be received by the governor, or at any of the departments of the state government from the secretary of the interior, when or whereby any lands or selection thereof shall be confirmed or certified to this state, under or by virtue of any grant or act of congress, it shall be the duty of the governor to cause a copy thereof to be prepared, certified and recorded in the manner specified in the first section of this act.

**SEC. 3. [Record—Fees.]**—That it shall be the duty of the several county clerks to whom any such copy shall be presented, to record the same in the book or books in which land patents are or may be recorded, and in the order in which such copy may be received; and such clerks shall be entitled to the same fees for recording such copies as are allowed by law for recording deeds, which fees shall be paid them out of the general fund, upon the warrant of the auditor therefor.

NOTE.—“An act to provide for recording the state's title to certain lands.” Laws 1872, 7 G. S. 868. Took effect Jan. 19, 1872. Provisions of the several acts relating to land grants, entry and selection of public lands swamp lands, etc., collated in chap. 59, G. S. 858, omitted from this volume. See chap. 80 and article VII chap. 83.

**SEC. 4. [Same—Copies—Evidence.]**—That each such copy, in this act provided for the record thereof, on a transcript of such record certified under the hand and seal of the county clerk in whose office the same shall be recorded and shall be received in all courts and places whatever as evidence of each and every fact and thing there in stated, as well as of the absolute title of the United States in and to the lands therein described, at the date of such communication.

**SEC. 5. [Entry on state lands by mistake.]**—That whenever any person has been allowed a homestead or pre-emption filing on land in any United States land office in the state of Nebraska, supposing the land to belong to the United States, or supposing the same to be open to homestead or pre-emption settlement because of being settled upon and improved before the survey thereof, and having made valuable improvements thereon, or any person having purchased the filing of any such lands, and afterwards ascertaining that the said lands belong to the state of Nebraska, the person entitled to said lands, shall be required to make a showing to the board of educational lands and funds, under oath, that his filing was made in good faith and not for the purpose of speculation, and that he supposed the land belonged to the United States at the time he made the homestead and pre-emption filing or purchased the said filing. [1881 § 1, chap. 58.]

**SEC. 6. [Duties of board of educational lands—Deed.]**—That upon receiving such a showing the said board shall examine into said showing, and if it is satisfied that said claim is a just and proper claim, and made in good faith, and that the United States will deed to the state of Nebraska, land in place of that upon which the applicant has filed or purchased a filing, the said board shall order a deed executed by the governor of the state of Nebraska to the United States, for said lands, to allow said party to complete his title under the United States laws, and thereupon the governor shall execute a deed of relinquishment to the United States for the said lands. [Id. § 2.]

## CHAPTER 70.—PUBLIC BUILDINGS.\*

**SECTION 1. [Doors to open outward.]**—That all public buildings now in process of construction, or hereafter to be built or constructed, which may or shall be used for churches, school houses, operas, theatres, lecture rooms, hotels, public meetings, town halls, or which may or shall be used for any purpose whereby a collection of people may be assembled together for religious worship, amusement, instruction, or other purpose, shall be so built and constructed that all doors leading from the main hall or place where said collection of people may be assembled, or from the principal room which may be used for any of the purposes aforesaid, shall be so swung upon their hinges and constructed that they shall open outward, and that all means of egress for the public from the main hall or principal room and from the building, shall be by means of doors which shall open outward from the main hall or building. [1877 § 1, 117.]

**SEC. 2. [Doors opening outward, changed.]**—That all public buildings now built and used for any of the purposes mentioned in section one of this act, shall within one year from the first day of July, A. D. 1877, be so changed that their doors and means of egress shall be in conformity with the provisions of this act; *Provided*, That the provisions of this section shall not apply to churches and school houses already erected in rural districts.

**SEC. 3. [Violation of act—Penalty.]**—That any person or persons who shall fail or refuse to comply with the provisions of this act, shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars.

**SEC. 4. [Same—Buildings closed.]**—That in all cities and towns having

SECS. 5-6. "An act to provide for the relinquishment of the title to lands filed upon supposed to be land belonging to the United States, and said public lands settled upon and improved before the survey thereof." Approved and took effect March 3, 1881.

\*NOTE.—"An act to regulate the means of egress from public buildings." Laws 1877, 117. Took effect June 1, 1877

a population of one thousand inhabitants and upwards, the mayor of said town or city shall be, and he is hereby authorized, to close and prohibit all public buildings from being used for any of the purposes mentioned in section one of this act, until the provisions of this act shall be complied with.

CHAPTER 71.—QUO WARRANTO AND MANDAMUS.\*

SECTION 1. [**Quo warranto by private person.**].—When any citizen of this state shall claim any office which is usurped, invaded, or unlawfully held and exercised by another, the person so claiming such office, shall have the right to file in the district court an information in the nature of a *quo warranto*, upon his own relation, and with or without the consent of the prosecuting attorney, and such person shall have the right to prosecute said information to final judgment; *Provided*, He shall have first applied to the prosecuting attorney to file the information, and the prosecuting attorney shall have refused or neglected to file the same. [R. S. 279. G. S. 871.]

SEC. 2. [**Mandamus by private person.**].—Any private person may, on his own relation, sue out writs of mandamus, without application to the prosecuting attorney.

SEC. 3. [**Costs.**].—Persons suing out either of the writs under the provisions of this chapter, shall be liable to costs as in civil cases.

SEC. 4. [**Supreme court.**].—Proceedings in the supreme court in applications for mandamus shall be regulated by chapter 9 of title 18 of the code of civil procedure, in applications by *quo warranto* by title 23 of said code, and in application for habeas corpus by chapter 25 of the criminal code; and all other provisions of law relating to those remedies, shall be applicable to said proceedings when had in said court exercising its original jurisdiction. [1867 § 1, 47.]

SEC. 5. [**District court.**].—The several district courts shall have and exercise concurrent jurisdiction with the supreme court in the several kinds of action enumerated in the foregoing section, and the mode of proceeding and the practice relating thereto shall be the same as that obtaining in the supreme court as herein provided and as now provided by law. [Id. § 2.]

CHAPTER 72.—RAILROADS.

ARTICLE I.—DUTIES AND LIABILITIES.†

SECTION 1. [**Fencing.**].—That every railroad corporation whose lines of road or any part thereof is open for use, shall, within six months after the passage of this act, and every railroad company formed or to be formed, but whose lines are not now open for use, shall, within six months after the lines of such railroad or any part thereof are open, erect and thereafter maintain fences on the sides of their said railroad, or the part thereof so open for use, suitably and amply sufficient to prevent cattle, horses, sheep, and hogs from getting on the said railroad, except at the crossings of public roads and highways, and within the limits of towns, cities, and villages, with opens, or gates, or bars at all the farm crossings of such railroads, for the use of the proprietors of the lands adjoining such railroad, and shall also construct, where the same has not already been done, and hereafter maintain at all road-crossings, now existing or hereafter established, cattle guards suitable and sufficient to prevent cattle, horses, sheep, and hogs from getting on to such railroad, and so long as such fences and cattle guards shall be made after

\*NOTE.—Chap. XLII. R. S. 279. Chap. 60, G. S. 871.

SEC. 1. The courts are not deprived of jurisdiction in cases of *quo warranto* or mandamus by the provisions of the election law on contested elections. 4 Neb. 514. 11 Id. 106. An information filed by consent of the district attorney, but not officially signed by him, held no error. 4 Neb. 512. An officer required to give an additional bond would not be excludod from performance of his duties, because he had neglected to do so, until a demand first made in that behalf. 1 Neb. 202. See note to sec. 645 civil code.

SECS. 4-5. "An act to regulate the prosecution of cases of original jurisdiction in the supreme court." Laws 1867, 47. G. S. 254. Took effect June 10, 1867. The reference to chap. 25 criminal code refers to criminal code of 1866, since repealed. But see secs. 353-376 of criminal code now in force, *post*.

†ART. I. "An act to define the duties and liabilities of railroad companies." Laws 1867, 88. G. S. 201. Took effect June 22, 1867. And see ante p. 144.

the time, hereinbefore prescribed for making the same shall have elapsed, and when such fences and guards, or any part thereof, is not in sufficiently good repair to accomplish the objects for which the same is herein prescribed, is intended, such railroad corporation and its agents shall be liable for any and all damages which shall be done by the agents, engines or trains of any such corporation, or by the locomotives, engines, or trains of any other corporations permitted and running over or upon their said railroad, to any cattle, horses, sheep, or hogs thereon; and when such fences and guards have been fully and duly made, and shall be kept in good and sufficient repair, such railroad corporation shall not be liable for any such damages, unless negligently or wilfully done. [1867 § 1, 88.]

SEC. 2. [**Liable for stock killed and injured.**].—Any railroad company hereafter running or operating its road in this state, and failing to fence on both sides thereof, against all live stock running at large at all points, shall be absolutely liable to the owner of any live stock injured, killed, or destroyed by their agents, employes, or engineers, or by the agents, employes or engines belonging to any other railroad company, running over and upon such road, or there being; *Provided*, That in case the railroad company liable under the provisions of this section, shall neglect or refuse to pay the value of any property so injured or destroyed, after thirty days notice in writing given, accompanied by an affidavit of the injury or destruction of said property, to any officer of the company, or any station agent, or ticket agent, employed in the management of its business, in the county where the injury complained of shall have been committed, such railroad company, their agents and employes shall, in an action brought to recover damages therefor, be held and they are hereby declared to be liable to pay double the value of the property so injured, killed, or destroyed as aforesaid; *Provided, further*, That if the railroad company do not object to the value of the property so injured or destroyed, as set forth in the notice aforesaid, within ten days, it shall be considered and taken as the true value, but if the said railroad company are dissatisfied with the value as set forth in [in] said notice, they shall, within ten days, leave a written notice to that effect at the residence or place of business of the owner of the stock so injured or destroyed, and the value shall then be ascertained and determined in accordance with the provisions of section 5 of the general herd law. [Amended 1877, 59.]

SEC. 3. [**Damages to passengers.**].—Every railroad company, as aforesaid, shall be liable for all damages inflicted upon the person of passengers while being transported over its road, except in cases where the injury done arises from the criminal negligence of the persons injured, or when the injury complained of shall be the violation of some express rule or regulation of said road actually brought to his or her notice.

SEC. 4. [**Service of summons.**].—Service upon railroad companies may be made as upon other corporations, or by leaving a copy of the summons by the proper officer, with any station agent, ticket agent, conductor or other officer of said railroad formed within the limits of this state, or left at their usual place of business within said county.

SEC. 5. [**Liability as common carriers.**].—No notice, either express or implied, shall be held to limit the liabilities of any railroad company as common carriers, unless they shall make it appear that such limitation was actually brought to the knowledge of the opposite party and assented to by him or them, in express terms, before such limitations shall take effect.

#### ARTICLE II.—FOREIGN COMPANIES.

SECTION 1. [**May extend into Nebraska.**].—That any railroad company heretofore organized under the laws of the states of Kansas, Missouri, Iowa, Min-

SEC. 2. So much of this section as gives "double" damages for property destroyed. *Held* unconstitutional. 6 Neb. 37

SEC. 5. See Const., sec. 4, ante p. 33. 5 Neb. 117

ART. II. SEC. 1. "An act to amend an act entitled an act to authorize non-resident railroad companies to build roads in Nebraska." Laws 1879, 106 Took effect June 1, 1879



nesota, or territory of Dakota, or any company so organized under the laws of another state whose road may extend across any one or part of any one of these states or said territory, is hereby authorized to extend and build its road into the state of Nebraska. And such railroad company shall have and possess all the powers, franchises, and privileges, and be subject to the same liabilities of railroad companies organized and incorporated under the laws of this state; *Provided*, Such non-resident company shall first file a true copy of its articles of incorporation, with the secretary of this state, and shall comply with the laws of Nebraska, as to filing and recording articles of incorporation and in all things required by law relating to railroads, and otherwise in this state; and such non-resident railroad company shall keep an office in this state in some county in which its road is, or is proposed to be, and shall be liable to civil process, to be sued and to sue, as provided by law. [1879 § 1, 106.]

**SEC. 2. [May mortgage, lease, or sell property in Nebraska.]**—That it shall be competent and lawful for any railroad company heretofore incorporated or organized, or which may be hereafter incorporated or organized under the laws of an adjoining state, and which shall have extended its railroad into this state or have become a corporation of this state under the laws thereof, to mortgage, lease, or sell that part of its railroad, and the property, rights, privileges, and franchises connected therewith, situated in this state, to any railroad in this state, and the railroad company making such purchase shall thereupon become vested with all the property, rights, privileges, and franchises of the company making such sale, and pertaining to the said railroad so sold, and shall be authorized to locate, construct, and complete, maintain and operate the railroad thus purchased, and may receive, hold, and convey all municipal aid, endowments, and property of any kind whatsoever, upon complying with the terms and conditions upon which the same were to be had, as fully and to the same extent as the railroad company making such sale, could have done had no such sale been made. [1871 § 1, 72.]

**SEC. 3. [Rights of purchasers.]**—Any railroad company heretofore incorporated, or organized, or which may be hereafter incorporated or organized under the laws of an adjoining state, and which shall have extended its railroad into this state, or under the laws of this state, shall have become incorporated and authorized to construct and maintain a railroad within this state, may mortgage or lease, sell or convey the whole or any part of its railroad, situated within the state, and the rights, privileges, and franchises connected therewith, and other property pertaining thereto, to any person or persons on such terms and conditions as may be agreed upon, and the person or persons making such purchase, and their associates, may become a body corporate under the laws of this state, in the manner prescribed for the creation and organization of railroad companies in this state; and on the organization of such corporation, it may take, receive, and hold the railroad and property so purchased by said corporators, and shall have, possess, and enjoy the same, and all the rights, privileges, and franchises connected therewith, and held and possessed by the company making such sale, and shall also have all the rights, privileges, and franchises of railroad companies organized under the laws of this state, with full power and authority to construct, complete, maintain, and operate the railroad thus purchased, receive, hold, and dispose of all endowments, grants of land, municipal or individual aid granted to said company making such sale, or to which said company was or might have become entitled, upon compliance with the terms and conditions upon which such endowments, grants, donations, or aid were to be had; and the railroad company so organized may, under the laws of this state, consolidate its stock and property with any other railroad company upon such terms and conditions as may be agreed upon; *Provided, however*, That no sale, or purchase, shall be made of railroads situated within this state, of companies without this state, or consolidations effected

SECS. 2-5. "An act to authorize railroad companies of adjoining states to mortgage or convey their property situated in the state of Nebraska." Laws 1871, 72. G. S. 204. Took effect Feb. 10, 1871.

as provided in this act, until the terms of such sale or consolidation shall have been approved by a majority of the stockholders in interest, in person, or by proxy, at the annual or special meeting, of which due notice shall be given by publication, or in writing to all the stockholders in interest, or the same be approved by the written consent of a majority of the stockholders in interest, filed in the office of said respective companies. [Id. § 2.]

**SEC. 4. [Contracts binding on assignees, etc.]**—That all contracts and agreements made by any railroad company prior to such transfer, lease, consolidation, or mortgage, shall be binding on the assignees, lessees, or mortgagees of such company, and that the rights of any stockholders, or parties entitled to stock therein, shall in no way be impaired by such transfer, lease, consolidation, or mortgage. [Id. § 3.]

**SEC. 5. [Purchasers to keep road in good running order.]**—When any company or persons shall have purchased any railroad, or two or more railroads are consolidated, as contemplated by the provisions of this act, such companies or persons so purchasing, shall keep each and every railroad line that may come in their possession by such purchases in good running order, with sufficient rolling stock, to transport the freight and passengers. They shall not discriminate against the business with either or any of said railroad lines either directly or indirectly by the detentions of freights or passengers, or charging more for freight or passage than is charged in proportion upon any other railroad line under the control of said company or persons. [Id. § 4.]

**SEC. 6. [Legalizing provision.]**—That any railroad company which has been organized under the laws of the states of Iowa, Kansas or Missouri, and which has heretofore extended its line of railroad in this state, or built any portion of its line of road in this state, and has filed a true copy of its original articles of incorporation in the office of the secretary of state of this state, is, from the time of filing said copy of its original articles of incorporation as aforesaid, hereby declared to be a legal corporation of this state, and entitled to all the rights, privileges and franchises of railroad companies, organized under and pursuant to the laws of the state of Nebraska. [G. S. (157) 206.]

#### ARTICLE III.—BOGUS SURVEYS.

**SECTION 1. [Plat of survey.]**—No proposition shall be submitted to the electors of any county in this state for donations of bonds or any other valuables, to any railroad corporation, unless said railroad corporation, through its authorized and responsible agent, files for record in the county clerk's office, where such donations of bonds or any other valuables are to be voted upon, a plat of the survey showing their exact line of route through said county, within at least two weeks previous to such an election; and no bonds, and so forth, shall be valid in case they are voted, unless said railroad corporation build their line of road within forty rods of their survey as filed in the county clerk's office. [1879 § 1, 151.]

#### ARTICLE IV.—SALES IN CERTAIN CASES.

**SECTION 1. [Continuous lines.]**—Every railroad company organized under the laws of this state whose railroad or railroads constructed or to be constructed within this state shall be so situated with reference to any railroad constructed or to be constructed through any adjoining state or territory by any railroad company organized or existing under the laws of the United States, or any state or territory that the same may be so connected at the boundary line of this state or at any point within this state by bridge, ferry, or otherwise, as to practically form a continuous line of railway over which cars may pass, is hereby authorized to purchase such

**SEC. 5.** "An act to legalize the incorporation of certain railroad companies in the state of Nebraska." G. S. 206. Took effect Feb. 14, 1873.

**ART. III.** "An act to prevent railroad corporations to impose upon the people by bogus surveys, in counties or precincts where they are asked to vote bonds or other valuables, in aid of such railroad corporations." Laws, 1879, 151. Took effect June 1, 1879.

**ART. IV.** "An act authorizing the sale and purchase of railroads in certain cases." Approved March 1. Took effect June 1, 1881.

connecting railway, or to sell the same to the railroad company constructing, owning or operating the said railroad through said adjoining state or territory as aforesaid, to said point of connection. And any such foreign railroad company purchasing under the provisions hereof any such connecting railroad within this state may manage the same by its board of directors and officers, and may operate the same and may issue thereon its stock and bonds to the same extent and in the same manner as authorized by the laws of this state, and the said company shall file for record in the office of the secretary of state of this state a true copy of its articles of incorporation, and the said company shall thereafter possess, exercise and enjoy within this state as to the control, management and operation of the said road, and as to the location, construction and operation of any extension of its said railroad or any connecting railroad or feeders within this state all the rights, powers, privileges and immunities, including the powers of eminent domain possessed by other railroad corporations of this state, and shall be liable to all the restrictions imposed by the general laws of this state upon the railroad corporations of this state. The purchase of any such railroad shall be subject to any and all laws, incumbrance or indebtedness existing against the railroad company from which such road may be so purchased. [1881 § 1, chap. 65.]

**SEC. 2. [Effect of act.]**—Said corporation shall be subject to the laws of this state as to that portion of the road purchased, built and operated in this state the same as if organized under the laws of this state; *Provided, however,* that nothing herein contained shall be construed as authorizing the purchase by any railroad company under the provisions of this act of any parallel and competing line of railroad within this state.

#### ARTICLE V.—RATES AND UNJUST DISCRIMINATIONS.

**SECTION 1. [Equal facilities.]**—Every railroad corporation shall give to all persons reasonable and equal terms, facilities and accommodations for the transportation of any merchandise or other property of every kind and description upon any railroad owned or operated by such corporation within this state, and for terminal handling, the use of the depot and other buildings, and grounds of such corporation, and at any point where its railroad shall connect with any other railroad, reasonable and equal terms and facilities of interchange and shall promptly forward merchandise consigned or directed to be sent over another road connecting with its road, according to the directions contained thereon or accompanying the same. [1881 § 1, chap. 68.]

**SEC. 2. [Maximum rate.]**—No railroad company in this state shall hereafter charge, collect or receive for the transportation of any merchandise or other property upon the railroad owned or operated by such company within this state a higher rate for such service than was charged by such company for the same or like service on the first day of November, A. D. 1880, as shown by the published rates of such company. And no railroad company shall demand, charge, collect or receive for such transportation for any specific distance, a greater sum than it demands, charges, collects or receives for a greater distance.

**SEC. 3. [Discrimination as to persons.]**—No railroad company within this state shall grant or allow to any person, company or association, upon the transportation of freight either directly or indirectly, any secret rate, rebate, drawback, unreasonable allowance for use of cars, or any undue advantage whatever, nor directly or indirectly charge to or receive from any person or persons, or association or corporation any greater or less sum, compensation, or reward than is charged to or received from any other person or persons, association or corporation for like and contemporaneous service in the receiving, transporting, storing, delivering or handling of freights.

**SEC. 4. [Penalty.]**—Any railroad company, or officer or agent of such railroad company who violates any of the provisions of this act, in addition to liabil-

**ART. V.** "An act to fix a maximum standard of freight charges on railroads, and to prevent unjust discriminations therein, or secret rates, rebates or drawbacks therefor." Approved Feb. 28. Took effect June 1, 1881.

ity for all damages sustained by reason of such violation, shall be liable for each offense to a penalty of five hundred dollars, which may be recovered in any county where such corporation has property.

#### ARTICLE VI.—PUBLIC OFFICES.

**SECTION 1. [Public office of railroad company].**—That all railroad corporations or companies doing business in the state of Nebraska as public carriers, either for the transportation of freight, or carrying passengers from any point in this state, are hereby required to have and maintain a public general office in this state, in some county through which said road runs, for the transaction of its business, which office shall be established on or before the first day of January A. D. 1882, and notice thereof given by publication in some newspaper on the line of its road for four consecutive weeks; *Provided*, That railroad corporations or companies, hereafter to be incorporated under the laws of this state, shall have one year, from the date of such incorporation in which to comply with the provisions of this act. [1881 § 1, chap. 67.]

**SEC. 2. [Books and business at office].**—It shall be the further duty of all such railroad corporations or companies doing business as aforesaid, to keep and maintain in such offices books in which shall be recorded the amount of the capital stock of such railroad corporation or company, and also the transfer of such stock, the amount of its assets and liabilities, and the names and places of residence of its officers, which said books shall be open to public inspection at all times. And the general manager, general superintendent, general freight or ticket agent or such other general officers or agents as said railroad corporations or companies shall have or employ, shall keep and maintain their offices at such general offices within this state: *Provided*, That railroad corporations or companies not operating over 10 miles of road in this state shall be exempted from the provisions of this act.

**SEC. 3. [Directors report to auditor].**—The directors of every railroad corporation or company having control of any road doing business in the state of Nebraska, shall annually make a report to the auditor of public accounts, of the amount of money received for the preceding year from passengers and freight, at any and all points in this state, which report shall be made and filed with the auditor on or before the fifteenth day of January of each year.

**SEC. 4. [Violations of act—Penalty].**—Any railroad corporation or company violating any of the provisions of this act or failing to comply with the provisions herein contained, shall forfeit all right to do business in this state, and on application of any person feeling aggrieved, it shall be the duty of any court having jurisdiction, upon proper and satisfactory proof, to place such railroad in the hands of a receiver and proceed to wind up its business.

**SEC. 5. [Same.]**—In addition to the penalties in the preceding section, the principal officers of such corporation or company shall be subject to fine not exceeding one thousand dollars or imprisonment upon conviction in the penitentiary, for a term not exceeding three years.

#### ARTICLE VII.—STREET RAILWAYS.

**SECTION 1. [Railway corporations].**—Any number of persons may be associated and incorporated under the general laws of this state providing for the creation of corporations for the purpose of constructing and operating a street railroad within any of the cities of this state, upon procuring the consent of a majority of the electors of any such city as hereinafter provided. [1877 § 1, 185. Const., Art. XI, Mis. Corp. § 2.]

**SEC. 2. [Articles—Record.]**—Every such corporation, previous to the

**ART. VI.** "An act to require railroad corporations doing business in the state of Nebraska, to have and maintain public offices in the state for the transaction of their business." Approved March 2. Took effect June 1, 1881.

**SECS. 1-5.** "An act to provide for the incorporation of street railroad companies within the cities of this state." Laws 1877, 135. Took effect June 1, 1877. This act superseding act of 1875, 294, the latter is omitted.

commencement of any business except its own organization, must adopt articles of incorporation and have them recorded in the office of the county clerk of the county in which the city within which it is proposed to construct and operate such street railroad is situated, and must procure the consent of a majority of the electors of such city as herein provided.

Sec. 3. [**Same—Termini of road.**—The articles of incorporation must fix the termini of such street railroad, and state the street or streets through which it is proposed to construct and operate the same.

Sec. 4. [**Submission to electors.**—The question of the consent of a majority of the electors of any such city to the constructing and operating of any such street railroad shall be determined by submitting the question to the electors of such city at an election to be held for that purpose, and of which election it shall be the duty of the mayor of any such city, upon the request of the common council of said city, to give at least ten days notice by publishing a notice in some newspaper published in such city, which notice shall state the termini of such proposed street railroad, and the street or streets through which it is proposed to construct and operate the same, the form in which the question shall be taken, and the time when such election will be held.

Sec. 5. [**Same—Election—Proceedings.**—Every such election shall be held at the time designated in the notice, and shall be held in the same manner and at the same places as the general city elections, and the returns shall be canvassed by the council of such city at its next meeting after any such election and the result declared, and if a majority of the votes cast at such election shall be in favor of the constructing and operating such proposed street railroad, the council shall cause the city clerk to make out a certificate of the result, stating that the consent of a majority of the electors of such city has been given to the constructing and operating of such street railroad, and deliver the same to the chief officer of such street railroad company, who shall cause the same to be recorded in the office of the county clerk where the articles of association of such street railroad company are recorded, and in the same book, and such certificate shall be prima facie evidence of the facts therein stated; and thereupon, such street railroad company shall be authorized to proceed and construct and operate such street railroad, as described in its articles of association, or any portion hereof, subject to such rules and regulations as may be established by ordinances of such city.

## CHAPTER 73.—REAL ESTATE.

SECTION 1. [**Deeds—Execution—Acknowledgment.**—Deeds of real estate or of any interest therein in this state, except leases for one year or for a less time, must be signed by the grantor, being of lawful age, in the presence of at least one competent witness, who shall subscribe his name as a witness thereto and be acknowledged or proved and recorded as directed in this chapter.

Sec. 2. [**Deeds—Acknowledgment.**—The grantor must acknowledge the instrument to be his voluntary act and deed.

Sec. 3. [**Acknowledgment before whom.**—The acknowledgment must be made or proved, if in this state, before a judge or clerk of any court, or a justice of the peace, or notary public therein; but no officer can take any such acknowledgment or proof out of his territorial jurisdiction.

NOTE.—Chap. XLIII, R. S. 280. Chap. 61, G. S. 872. Secs. 18, 19, 20, 28 and 30 of the original chapter were substantially re-enacted in 1879 and appear ante p. 186. Secs. 60-84 of original chapter are transferred and appear in chapter 32, ante p. 286.

Sec. 1. The presence of the attesting witness, at the time the instrument is subscribed by the parties thereto, is not essential if he is immediately afterwards told by them that such instrument is their agreement, and is by them requested to subscribe the same as a witness. 4 Neb. 121. Weakness of understanding is not sufficient to avoid a deed. 2 Neb. 116. 4 Id. 117. 6 Id. 404. Deeds of assignment for benefit of creditors must be executed as required by this section. 10 Neb. 513. Delivery of deed. 8 Neb. 371. 10 Neb. 129. Mistake or abbreviation in name of grantee. 7 Neb. 2. Execution by agent. 5 Neb. 304. And see 5 Neb. 174.

Sec. 2. The acknowledgment is no part of the deed itself. 7 Neb. 164. A certificate that "personally appeared before me" etc. is a sufficient statement of the identity of the grantor. Id. See note to sec. 35.

**Sec. 4. [Same in another state.]**—If acknowledged or proved in any other state or territory, or district of the United States, it must be done according to the laws of such state, territory, or district, and must be acknowledged or proved before any officer authorized to do so by the laws of such state, territory, or district, or before a commissioner appointed by the governor of this state for that purpose.

**Sec. 5. [Same—Authentication.]**—In all cases provided for in section four of this chapter, (if such acknowledgment or proof is taken before a commissioner appointed by the governor of this state for that purpose, notary public, or other officer using an official seal,) the instrument thus acknowledged or proved, shall be entitled to be recorded without further authentication; *Provided*, That in all other cases, the deed or other instrument shall have attached thereto a certificate of the clerk of a court of record, or other proper certifying officer of the county, district, or state within which the acknowledgment or proof was taken, under the seal of his office, showing the person whose name is subscribed to the certificate of acknowledgment, was at the date thereof such officer as he is therein represented to be; that he is well acquainted with the handwriting of such officer; that he believes the said signature of such officer to be genuine, and that the deed or other instrument is executed and acknowledged according to the laws of such state, district, or territory.

**Sec. 6. [Same in foreign country.]**—If such deed be executed in a foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge des affaires, commissioner, commercial agent, or consul of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate.

**Sec. 7. [Refusal to acknowledge—Proof.]**—If the grantor die before acknowledgment, or if for any cause his attendance cannot be procured in order to make the same, or, having appeared, he refuses to acknowledge it, proof of the execution and delivery of the deed may be made by any competent subscribing witness thereto, before any officer authorized to take the acknowledgment; and the witness must state upon oath, his own place of residence, that he set his name to the deed as a witness, that he knew the grantor in such deed, and saw him sign or heard him acknowledge he had signed the same; and such proof shall not be taken unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such deed.

**Sec. 8. [Witnesses to appear.]**—The officer has power to issue the necessary subpoenas for the subscribing witnesses, residing in the same county, to appear before him for the purpose aforesaid.

**Sec. 9. [Same—Failure—Penalty.]**—Every person who, being served with a subpoena, and having been tendered the fees of a witness in a justice's court, shall, without reasonable cause, refuse or neglect to appear, or, appearing, shall refuse to answer upon oath, touching the matters aforesaid, shall forfeit to the party injured one hundred dollars; and may also be committed to prison by the officer who issued such subpoena, there to remain without bail until he shall submit to answer upon oath as aforesaid.

**Sec. 10. [Witness absent.]**—If all the subscribing witnesses shall be dead,

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Sec. 5. See sec. 36, this chapter. If a deed is executed and acknowledged in another state before a commissioner of deeds of this state, a notary public, or other officer using an official seal, the law presumes a compliance with the law of the place of execution and no further authentication is necessary, but in all other cases there must be attached the certificate mentioned in the proviso to this section. 4 Neb. 435. A deed executed before a justice of the peace in Virginia, there being no evidence that it was executed and acknowledged according to the laws of Virginia, *held*, properly excluded. *Id.* See also 5 Neb. 174. The record of a mortgage executed in another state where the acknowledgment is taken by an officer not using an official seal, and not certified to as required in the proviso is void and inadmissible in evidence against a subsequent purchaser; but if actual notice of the mortgage by the purchaser be shown, the judgment will not be reversed. 10 Neb. 492.

or out of the state, such death or absence is first to be proved, and then the execution of the deed may be proved before such officer by proving the handwriting of the grantor, and of any subscribing witness to such deed.

**SEC. 11. [Unacknowledged deed—Filing.]**—Any person interested in a deed that is not acknowledged, may, at any time before or during the proceedings before such officer, file in the office of the county clerk of the county where the lands lie, a copy of the deed, compared with the original by the clerk, which shall, for the space of thirty days thereafter, have the same effect as the recording of the deed, if such deed shall within that time be duly proved and recorded.

**SEC. 12. [Certificate of acknowledgment.]**—Every officer who shall take the acknowledgment or proof of any deed, shall endorse a certificate thereof, signed by himself, on the deed; and in such certificate shall truly and specifically set forth the matters hereinbefore required to be done, known or proved, on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

**SEC. 13. [Evidence—Deeds—Transcript.]**—Every deed acknowledged or proved, and certified by any of the officers before named, including the certificate specified in section five of this chapter, whenever such certificate is required by law, may be read in evidence without further proof, and shall be entitled to be recorded. The record of a deed duly recorded, or a transcript thereof duly certified, may also be read in evidence with the like force and effect as the original deed, whenever, by the party's oath or otherwise, the original is known to be lost, or not belonging to the party wishing to use the same, nor within his control. Neither the certificate of the acknowledgment or of the proof of any deed, nor the record or transcript of the record of such deed, shall be conclusive, but may be rebutted, and the force and effect thereof may be contested by any party affected thereby. If the party contesting the proof of a deed, shall make it appear that such proof was taken upon the oath of an interested or incompetent witness, neither such deed, nor the record thereof, shall be received in evidence until established by other competent proof.

**SEC. 14. [Certificate of acknowledgment—Record.]**—The certificate of the proof or acknowledgment of every deed, and the certificate of the genuineness of the signature of any officer, in the cases where such last mentioned certificate is required, shall be recorded together with the deed so proved or acknowledged; and unless the said certificates be so recorded, neither the record of such deed, nor the transcript thereof, shall be read or received in evidence.

**SEC. 15. [Time of record.]** Every deed entitled by law to be recorded, shall be recorded in the order, and as of the time when the same shall be delivered to the clerk for that purpose, and shall be considered recorded from the time of such delivery.

**SEC. 16. [Effect of record—Notice.]**—All deeds, mortgages, and other instruments of writing, which are required to be recorded, shall take effect and be in force from and after the time of delivering the same to the clerk for record, and not before, as to all creditors and subsequent purchasers in good faith without notice; and all such deeds, mortgages, and other instruments, shall be adjudged void as to all such creditors and subsequent purchasers without notice, whose deeds, mortgages, and other instruments, shall be first recorded; *Provided*, That such deeds, mortgages, or instruments shall be valid between the parties.

**SEC. 13.** One link in the plaintiff's chain of title was a deed from Shorter to Young, plaintiff's lessor, which deed contained thirty-three descriptions of land in three different counties, while the lease from Young to plaintiff contained but one of said descriptions. *Held*, that the record of said deed was properly received in evidence on the trial without inquiry as to the possession of the original. 10 Neb. 500. And see 10 Neb. 481.

**SEC. 16.** The proper registration of a conveyance operates as constructive notice to all subsequent purchasers, and is as effectual in law as personal notice. 6 Neb. 269. The record is only notice of the lands described in the instrument, but where there is an omission by mistake and a judgment is subsequently recovered against the mortgagor the lien of the judgment creditor is subject to the equity of the mortgage. 7 Neb. 289. (Overruling 1 Neb. 465.) See 7 Neb. 171, 394, 465. 8 Neb. 435, 399. An unrecorded mortgage takes precedence of a subsequent conveyance by the mortgagor without consideration. 9 Neb. 120. Prior deed takes precedence of attachment or judgment if recorded before deed based on such attachment or judgment. 10 Neb. 189. See also 4 Neb. 436. 5 Id. 160. 7 Id. 234. 8 Id. 435, 451. 10 Id. 583, 584.

**SEC. 17. [Irregular acknowledgment.]**—They shall not be deemed lawfully recorded unless they have been previously acknowledged or proved in the manner herein prescribed.

**SEC. 18. [Deeds, where recorded.]**—Deeds and other instruments, relating to or affecting the title of real estate in this state, shall be recorded in the county in which such real estate, or any part thereof, is situated; but if such county is not organized, then in the county to which such unorganized county is attached for judicial purposes. [R. S. § 21.]

**SEC. 19. [Powers—Revocation.]**—No instrument containing a power to convey, or in any manner to affect real estate, executed, acknowledged, or proved, and certified and recorded in conformity with the requirements of this chapter, can be revoked by any act of the party, or parties thereto, until the instrument of revocation is executed, acknowledged or proved and certified, and filed for record with the county clerk of the county in which the power is recorded. [R. S. § 22.]

**SEC. 20. [Official seal.]**—It shall be no objection to the record of a deed that no official seal is appended to the recorded acknowledgment or proof thereof, if, when the acknowledgment or proof purports to have been taken by an officer having an official seal, there be a statement in the certificate of acknowledgment or proof that the same is made under his hand and seal of office, and such statement shall be presumptive evidence that the affixed seal was attached to the original certificate. [Amended 1875, 90.]

**SEC. 21. [Lost deed and record.]**—The copy of any record, or of any recorded deed or instrument, attested and authenticated in such manner as would by law entitle it to be read in evidence, may, on proof of the loss of the original and of the record, be again recorded, and such record shall have the same effect as the original record. [R. S. § 24.]

**SEC. 22. [Wills—Record.]**—Any will of real estate which shall have been duly proved in the probate court of any county in this state, and any such will, the proof of which shall be contested in that court, and carried up by appeal, or otherwise, and the validity of which shall be finally established, may, with the certificate of proof annexed thereto, be recorded in the office of the county clerk of the county or counties where the said real estate lies, in the same manner, and with like effect as in case of deeds. [R. S. § 25.]

**SEC. 23. [Decree—Judgment—Record—Evidence.]**—Any exemplification of any decree, or judgment in partition on final decree in chancery affecting real estate, may in like manner be recorded in the county clerk's office, in any county in which any real estate described therein may be situated; such record or exemplification thereof shall be received in evidence, and shall be as effective in all cases as the original exemplification would be if produced, and shall be open to the same objection. [R. S. § 26.]

**SEC. 24. [Same—Index.]**—On recording any such will, exemplification, or decree, the clerk shall index the same with the indices of deeds, and as near as may be as deeds are to be indexed, placing the name of the deviser, petitioner, or plaintiff, with the grantors, and the devisee or defendant with the grantees. [R. S. § 27.]

**SEC. 25. [Deed intended as mortgage.]**—Every deed conveying real estate, which, by any other instrument in writing, shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; and the person for whose benefit such deed shall be made, shall not derive any advantage from the recording thereof, unless every writing operating as a defeasance of the same, or explana-

SEC. 17. Cited 7 Neb. 234. 10 Id. 513.

SEC. 25. A deed absolute, if given for security, is a mortgage, as between the parties and all persons having knowledge of the purpose for which it is given. 1 Neb. 343. To vary the legal import of a deed absolute, the evidence of the intention of the parties must be clear and conclusive, before equity will determine such deed to be a mortgage security only. 3 Neb. 145. 4 Neb. 99. A conveyance in the form of a deed of trust to secure payment of money, and in case of failure to pay the trustee shall sell, or upon payment reconvey, is in effect only a mortgage. 4 Neb. 318. 6 Neb. 389.



tory of its being designed to have the effect only of a mortgage, or conditional deed, be also recorded therewith, and at the same time. [R. S. § 29.]

SEC. 26. [**Mortgage—Discharge.**—Any mortgage that has been, or may hereafter be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the county clerk, or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded. [R. S. § 31.]

SEC. 27. [**Same.**—Any mortgage shall also be discharged upon the record thereof, by the county clerk in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged. [R. S. § 32.]

SEC. 28. [**Same—Index.**—Every such certificate, and the proof or the acknowledgment thereof shall be indexed in the order of mortgages, and recorded at full length; and in the record of discharge, the clerk shall make a reference to the book and page where the mortgage is recorded. [R. S. § 33.]

SEC. 29. [**Refusal to discharge.**—If any mortgagee, or his personal representative or assignee, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested; and after tender of his reasonable charges, refuse or neglect to discharge the same as provided in this chapter, or to execute or acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs, or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in the proper action. [R. S. § 34.]

SEC. 30. [**Application of act to public lands.**—The provisions of this chapter shall apply to the conveyance of all claims and improvements upon the public lands. [R. S. § 35.]

SEC. 31. [**Land in adverse possession.**—No grant or conveyance of lands, or interest therein, shall be void for the reason that at the time of the execution thereof, such lands shall be in the actual possession of another, claiming adversely. [R. S. § 36.]

SEC. 32. [**Certificate of record on instrument.**—The clerk shall mark upon the deed or instrument, after recording the same, the book and page in which the same is recorded. [R. S. § 37.]

SEC. 33. [**Commissioners of deeds—Acts legalized.**—The governor of this state may commission so many commissioners in such of the states and territories of the United States, and in the District of Columbia, as he may deem expedient, in any one city or county, who shall continue in office four years, and shall have authority to take the acknowledgment and proof of the execution of any instrument in writing, conveying real estate, or any interest therein, or affecting the same, lying in this state, or of any assignment, transfer, power of attorney, satisfaction of a judgment, or of a mortgage, or of any other writing to be used or recorded in this state; and also to administer oaths and affirmations necessary to the proper discharge of their duties. All acts performed in pursuance of the laws of this state or the laws of the territory of Nebraska, by commissioners of deeds heretofore appointed by the governor of the territory of Nebraska, shall be deemed and held to be valid and binding in law. [Amended 1867, 51.]

SEC. 34. [**Same—Acknowledgments before.**—Any acknowledgment or proof taken in pursuance of the powers hereby conferred, and in accordance with the provisions of this chapter, and certified by the commissioner, under his hand and official seal, upon the instrument mentioned in the preceding section, shall, when authenticated as hereinafter mentioned, be entitled to be recorded in the office of the county clerk, and shall have the same force and effect, and be as available as if taken or made before any officer by this chapter authorized to take

proofs or acknowledgments, residing in this state; and any affidavit or affirmation so made before any such commissioner, certified and authenticated as aforesaid, may be read in evidence, and shall be as good and effectual to all intents, as if taken and certified by an officer authorized to administer oaths residing in this state. [R. S. § 39.]

**SEC. 35. [Commissioner—Oath—Seal.]**—Every commissioner appointed as aforesaid, shall, before he performs any duty by virtue of his appointment and of this law, take and subscribe an oath or affirmation before some officer authorized to administer the same, well and faithfully to perform all the duties of such commissioner, under and by virtue of the laws of Nebraska, which oath or affirmation shall be filed in the office of the secretary of state of Nebraska. And every such commissioner shall also, before he enters upon the duties of his office, cause to be prepared an official seal, on which shall be designated his name, and the words, "a commissioner for Nebraska," together with the name of the state or territory, city, and county within which he shall reside, and for which he shall have been appointed, and shall transmit to and cause to be filed in the office of said secretary, a distinct impression of such seal, taken upon wax or some other substance capable of receiving and retaining a clear impression, together with his signature in his own proper handwriting. [R. S. § 40.]

**SEC. 36. [Same—Certificate of authentication.]**—When any deed, or other instrument shall be proved or acknowledged, or any oath or affirmation shall be taken before any commissioner appointed by virtue of this chapter, before it shall be entitled to be used, recorded or read in evidence, in addition to the preceding requisites, there shall be subjoined or affixed to the certificate, signed and sealed by each commissioner as aforesaid, a certificate under the hand and official seal of the secretary of state of Nebraska, certifying that such commissioner was, at the time of taking such proof or acknowledgment, or of administering such oath or affirmation, duly authorized to take the same, and that the secretary is acquainted with the handwriting of such commissioner, or has compared the signature to such certificate with the signature of such commissioner deposited in his office, and has also compared the impression of the seal affixed to such certificate with the impression of the seal of such commissioner deposited in his office, and that he verily believes the signature and the impression of the seal of the said certificate to be genuine. [R. S. § 41.]

**SEC. 37. [Same—Time—Date.]**—No commissioner appointed under or by virtue of this law, shall be authorized to take the proof or acknowledgment of any deed or instrument, or to administer any oath or affirmation at any place other than that within which he shall reside, or for which he shall have been appointed; and every certificate of any such commissioner to any proof or acknowledgment taken before him, or to any oath or affirmation administered by him, shall specify the day on which, and the city, or town, and county, within which the same was taken, or administered; and without such specification, the said certificate shall be void. [R. S. § 42.]

**SEC. 38. [Acknowledging officer—Duty.]**—No acknowledgment of any conveyance having been executed shall be taken by any officer, unless the officer taking the same shall know, or have satisfactory evidence that the person making such acknowledgment is the person described in, and who executed such conveyance. [R. S. § 43.]

**SEC. 39. [Mortgage—Assignment.]**—The recording of an assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee. [R. S. § 44.]

**SEC. 40. [U. S. land office certificates—Patents—Record.]**—All certificates of the register and recorder of any United States land office, for the entry or purchase of any tract of land, and all letters patent of land from the

SEC. 36. See sec. five this chapter, and note, p. 398.

SEC. 38. Acknowledgment sufficient if it shows requirements of statute have been complied with. 7 Neb. 167

United States, or lands lying in this state, may be recorded in the county in which the land lies; and the record of such certificates and patents, and all copies thereof so recorded, duly certified by the county clerk, shall be *prima facie* evidence of the existence of such certificates and patents, and conclusive evidence of the existence of such record. [R. S. § 45.]

SEC. 41. [**Fraudulent violations of act—Penalty.**]—Every officer within this state, authorized to take the acknowledgment or proof of any conveyance, and every county clerk, who shall be guilty of knowingly stating an untruth, or guilty of any malfeasance or fraudulent practice in the execution of the duties prescribed for them by law, in relation to the taking or the certifying the proof or acknowledgment, or the recording or certifying of any record of any such conveyance, mortgage, or instrument in writing, or in relation to the canceling of any mortgage, shall, upon conviction, be adjudged guilty of a misdemeanor, and be subject to punishment by fine not exceeding five hundred dollars, and imprisonment not exceeding one year, and shall also be liable in damages to the party injured. [R. S. § 46.]

SEC. 42. [**Deeds of married women.**]—Any real estate belonging to a married woman, may be managed, controlled, leased, devised or conveyed by her by deed, or by will, in the same manner and with like effect as if she were single. [R. S. § 47.]

SEC. 43. [**Dower.**]—To convey her right of dower, she must execute a deed with or without her husband. [R. S. § 48.]

SEC. 44. [**"Real estate" defined.**]—The term "real estate," as used in this chapter, shall be construed as co-extensive in meaning with "lands, tenements, and hereditaments," and as embracing all chattels real, except leases for a term not exceeding one year. [R. S. § 49.]

SEC. 45. [**"Purchaser" defined.**]—The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any real estate or interest therein, shall be conveyed for a valuable consideration, and also any assignee of a mortgage or lease, or other conditional estate. [R. S. § 50.]

SEC. 46. [**"Deed" defined.**]—The term "deed," as used in this chapter, shall be construed to embrace every instrument in writing, by which any real estate or interest therein is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity, except last wills, and leases for one year or for a less time. [R. S. § 51.]

SEC. 47. [**Power of attorney.**]—The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when proved or acknowledged in the manner prescribed in this chapter, may be recorded in the office of the county clerk of any county in which the real estate to which such power or contract relates may be situated; and when so proved or acknowledged, and the record thereof when recorded, or the transcript of such record, may be read in evidence, in the same manner and with the like effect as a conveyance recorded in such county. [R. S. § 52.]

SEC. 48. [**Married woman—Covenants of husband.**]—A married woman shall not be bound by any covenant in a joint deed of herself and husband. [R. S. § 53.]

SEC. 49. [**Words of inheritance.**]—The term "heirs," or other technical words of inheritance, shall not be necessary to create or convey an estate in fee simple. [R. S. § 52.]

SEC. 50. [**All interest conveyed.**]—Every conveyance of real estate shall pass all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used. [R. S. § 55.]

SEC. 42. See chapter entitled "Married women," ante page 343. Although a married woman is not liable on her note except the same be given on the faith and credit and with reference to her separate estate yet a mortgage given by her on her property or her dower interest in her husband's property is good. 8 Neb. 269.

SEC. 46. Cited 10 Neb. 482, 513. SEC. 47. See 5 Neb. 302. SEC. 50. Cited 6 Neb. 269.

**SEC. 51. [After acquired interest.]**—When a deed purports to convey a greater interest than the grantor was at the time possessed of, any after acquired interest of such grantor to the extent of that which the deed purports to convey, shall accrue to the benefit of the grantee; *Provided, however,* That such after acquired interest shall not inure to the benefit of the original grantor, or his heirs or assigns, if the deed conveying said real estate was either a quit-claim or special warranty, and the original grantor in any case shall not be stopped from acquiring said premises at judicial or tax sale, upon execution against the grantee or his assigns, or for taxes becoming due after date of his conveyance. [Amended 1875, 90.]

**SEC. 52. [Estates in futuro.]**—Estates may be created to commence at a future day. [R. S. § 57.]

**SEC. 53. [Construction of instrument.]**—In the construction of every instrument creating or conveying, or authorizing or requiring the creation or conveyance of any real estate, or interest therein, it shall be the duty of the courts of justice to carry into effect the true interest of the parties, so far as such intent can be collected from the whole instrument, and so far as such intent is consistent with the rules of law. [R. S. § 58.]

**SEC. 54. [Aliens.]**—Any alien may acquire and hold real estate or interest therein, by purchase, devise, or descent, and he may convey, mortgage, and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such real estate shall be held, conveyed, mortgaged, or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of the United States. [R. S. § 59.]

**SEC. 55. [Legal title in mortgagor.]**—In the absence of stipulations to the contrary, the mortgagor of real estate retains the legal title and right of possession thereof. [R. S. § 85.]

**SEC. 56. [Agent.]**—Every instrument required by any of the provisions of this chapter to be subscribed by any party, may be subscribed by his agent thereto authorized by writing. [R. S. § 84.]

**SEC. 57. [Action to quiet title.]**—That an action may be brought and prosecuted to final decree, judgment, or order, by any person or persons, whether in actual possession or not, claiming title to real estate, against any person or persons, who claim an adverse estate or interest therein, for the purpose of determining such estate or interest, and quieting the title to said real estate. [G. S. § 1, 882.]

**SEC. 58. [Pleadings—Procedure.]**—All such pleadings and proofs and subsequent proceedings shall be had in such action now pending or hereafter brought, as may be necessary to fully settle and determine the question of title between the parties to said real estate, and to decree the title to the same, or any part thereof, to the party entitled thereto; and the court may issue the appropriate order to carry such decree, judgment, or order into effect. [Id. § 2.]

**SEC. 59. [Reversioners.]**—Any person or persons having an interest in remainders or reversion in real estate, shall be entitled to all the rights and benefits of this act. [Id. § 3.]

**SEC. 60. [Costs.]**—If the defendant or any one of several defendants, shall appear and disclaim all title and interest adverse to the plaintiff, such defendant shall recover his costs. In other cases the costs shall abide the final decree, judgment, or order in the action. [Id. § 4.]

**SEC. 61. [Application of act—Heirs.]**—The provisions of this act shall not in any respect apply to the settlement, partition, or division of real estate among the heirs of a decedent, where the same is provided for by the intestate laws of this state. [Id. § 5.]

**SEC. 55.** The mortgagee has no interest in the property which he can convey by lease. 10 Neb. 302. And see 10 Neb. 428.

**SEC. 57.** "An act to quiet title to real estate." G. S. 882. Took effect Feb. 24, 1873. A party not in possession must possess the legal title in order to maintain the action. 7 Neb. 376. Even without the statute a court of equity has jurisdiction to set aside a fraudulent conveyance constituting a cloud upon plaintiff's title to real estate owned by him, though not in his actual possession. 10 Neb. 188.

## CHAPTER 74.—RECORDS.\*

**SECTION 1. [Public records—Examination.]**—All citizens of this state, and all other persons interested in the examination of the public records, are hereby fully empowered and authorized to examine the same, free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business. [R. S. 297. G. S. 883.]

## CHAPTER 75.—REFORM SCHOOL.†

**SECTION 1. [Location.]**—That the "Reform School for Juvenile Offenders" now located and established at Kearney in the county of Buffalo, is hereby recognized and continued as a state reform school for the confinement, discipline, education, employment and reformation of juvenile offenders as herein provided. [1881 § 1, chap. 69.]

**SEC. 2. [Officers.]**—The board of public lands and buildings shall provide for the instruction of the inmates, and shall appoint a superintendent, a steward, a teacher or teachers, and such other officers as in their judgment the wants of the institution may require, and prescribe their duties. They may appoint and remove officers at their pleasure and determine the salaries to be paid them; *Provided*, Superintendent's salary shall not exceed fifteen hundred dollars (\$1,500.00) per annum.

**SEC. 3. [Instruction.]**—The board shall cause the boys and girls under their control to be instructed in correct principles of morality, and in such branches of useful knowledge as are adapted to their age and capacity, and in some regular course of labor as is best suited to their age, strength, disposition and capacity, and as may seem best adapted to secure the reformation and future benefit of the boys and girls.

**SEC. 4. [Duties of superintendent.]**—The superintendent so appointed shall have charge of all the property connected with the institution, and shall keep a complete account of all expenditures, said expenditures to be approved by said board, and shall keep an account of all property intrusted to him, in such manner as the said board may require; his books and documents relating to the school shall at all times be open to the inspection of the said board; he shall keep a register containing the name, age, and circumstances connected with the early history of each boy and girl, and shall add such facts as shall come to his knowledge relating to his or her history while at the institution.

**SEC. 5. [Authority of court.]**—When a boy or girl under the age of sixteen years, shall, in any court of record in this state, be found guilty of any crime except murder or manslaughter, the court may, if in its opinion the accused is a proper subject therefor, instead of entering judgment, cause an order to be entered that said boy or girl be sent to the state reform school in pursuance to the provisions of this act; and a copy of said order, duly certified by the clerk, under seal of said court, shall be a sufficient warrant for carrying said boy or girl to the school, and for his or her commitment to the custody of the superintendent thereof.

**SEC. 6. [Proceedings before justice of the peace—Order to guardian.]**—When a boy or girl under the age of sixteen shall be convicted before a justice of the peace or other inferior court of any crime, or being a disorderly person, it shall be the duty of the magistrate before whom he or she may be convicted, to forthwith send such boy or girl, together with all the papers filed in his office on the subject, under the control of some officer to a judge of a court of record, who shall then issue an order to the parent or guardian of said boy or girl, or such person as may have him or her in charge, or with whom he or she has last resided, or one known to be nearly related to him or her, or if he or

\*NOTE.—Chap. XLIV, R. S. 297 Chap. 62, G. S. 883.

†NOTE.—"An act providing for the government and maintenance of the state reform school at Kearney, and the trial, commitment, punishment and education therein of juvenile offenders." Approved and took effect March 4, 1881.

she be alone and friendless, then to such person as said judge may appoint to be guardian for the purposes of the case, requiring him or her to appear at a time or [and] place stated in said order, to show cause why said boy or girl should be committed to the reform school for reformation and instruction.

**SEC. 7. [Service of order.]**—Said order shall be served by the sheriff or other officer, by delivering a copy thereof, personally, to the party to whom addressed, or leaving it with some person of full age at the place of residence or business of said party, and immediate return shall be made to the said judge at the time and manner of such service. The fees of the sheriff or other officer in this chapter, shall be the same as now allowed by law for like services.

**SEC. 8. [Examination.]**—At the time and place mentioned in said order or at the time and place to which it may be adjourned, if the parent or guardian to whom said order may be addressed shall appear, then in his or her presence or if he or she fail to appear, then in the presence of some suitable person whom the said judge shall appoint as guardian for the purposes of the case, it shall be lawful for the said judge to proceed to take the voluntary examination of said boy or girl, and to hear the statements of the party appearing for him or her and such testimony in relation to the case as may be produced, and if upon examination and hearing the said judge shall be satisfied that the boy or girl is fit subject for the state reform school, he may commit him or her to said school by warrant.

**SEC. 9. [Warrant of commitment.]**—The judge shall certify in said warrant the place in which the boy or girl resided at the time of his or her arrest, also his or her age, as near as can be ascertained, and command the said officer to take the said boy or girl and deliver him or her without delay to the superintendent of said school, or other person in charge thereof, at the place where the same is established; and such certificate, for the purpose of this act, shall be conclusive evidence of his or her residence or age. Accompanying this warrant the judge shall transmit to the superintendent by the officer executing it, a statement of the nature of the complaint, together with such other particulars concerning the boy or girl as the judge is able to ascertain; *Provided*, The expense of conveying any boy or girl so committed to said reform school, or of returning them to their parent or guardian after their release therefrom, shall be at the expense of the state.

**SEC. 10. [Writs of error.]**—The proceedings before any judge of the county court may be reviewed on writ of error by the district court and proceedings before any district court or judge thereof may be reviewed by the supreme court in the manner provided by law for the review of other criminal cases in those courts.

**SEC. 11. [Term of commitment.]**—Every boy or girl committed to the reform school shall remain until he or she shall arrive at the age of majority or is reformed or legally discharged. The discharge of any boy or girl so reformed or having arrived at the age of majority, shall be a complete release of all penalties incurred by conviction of the offense for which he or she was committed.

**SEC. 12. [Penalty for assisting escapes.]**—Every person who unlawfully aids or assists any boy or girl lawfully committed, in escaping or attempting to escape therefrom, or knowingly conceal said boy or girl after his or her escape, shall be punished by fine not exceeding five hundred dollars, or imprisonment in the state penitentiary not exceeding three years.

**SEC. 13. [Repealed all parts of act of 1879, 418, inconsistent with this act.]**

**SEC. 14. [Emergency clause.]**

## CHAPTER 76.—REGISTRATION OF VOTERS.

**SECTION 1. [Registrars—Appointment—Fees.]**—That there shall be appointed by the governor of the state from among the citizens thereof men

NOTE.—"An act to provide for the registration of voters in cities of the first class and certain cities of the second class" Took effect Feb. 27, 1878. G. S. 885.

ties under township organization, and except in cities of the

**Compared.]**—The county clerk shall cause such lists to be compared with a list of taxable real property on file in his office.

**Delivery to assessor.]**—The county clerk shall deliver to the assessor the books, and all blanks necessary to be used by the assessor to list real and personal property, to be in readiness for use on or before the first day of April in each year.

**Duties to call for books, etc.—Failure—Removal.]**—It shall be the duty of each assessor to call on the county clerk on or before the first day of each year, and receive the necessary books and blanks for the assessment of real property, and the failure of any assessor so to do shall be deemed sufficient cause to declare his office vacant, and for the appointment of a successor.

**Additional lands.]**—If, after the delivery of such books to the assessor in any year, the clerk shall receive an abstract showing the entry of any lands or lots not contained in such books, it shall be his duty to furnish a list of the same to the proper assessor within five days after such abstract is received.

**Sec. 51. [Assessor's deputies.]**—If any assessor, for any cause whatever, shall be unable to perform the duties required of him within the time designated by law, he may, as the case may require, appoint one or more suitable persons to act as deputies to assist him in making the assessment, and may designate the township, precinct, county, city or village in which such deputies are authorized to list and assess property. Such deputy assessors shall make their returns to the assessor.

**Sec. 52. [Realty, how assessed.]**—Assessors shall, between the first day of April and the first day of June of each year, actually view and determine, as early as practicable, the value of each tract or lot of land listed for taxation, as provided by this act, and set down in proper columns, in the book furnished him, the value of each tract or lot improved, the value of each tract or lot not improved, and the total value. He shall also set down, in separate columns, the number of acres in wheat, corn, oats, meadow, and other field products, the number of fruit trees and grape vines, in that year.

**Sec. 53. [Additional lands added.]**—If the assessor discovers any real property, subject to taxation, which has not been returned to him by the owner, he shall list and assess such property.

**Sec. 54. [Personalty, how assessed.]**—The assessor shall also, between the first day of April and June, proceed to take a list of the taxable personal property in his county, township, precinct, city, or village, and assess the value thereof in the manner following, to wit: He shall call at the office, place of doing business, or residence of each person required by this act to list property, and list the name, and shall require such person to make a correct statement of his taxable property, in accordance with the provisions of this act; and the person listing the property shall enter a true and correct statement of such property, in the form prescribed by this act, which shall be signed and sworn to, to the extent required by this act, by the person listing the property, and delivered to the assessor; and the assessor shall thereupon assess the value of such property, and enter the same in his books with the name of the parties in alphabetical order, and the numbers and kinds and values of the several species of property required to be listed, and their total value; *Provided*, If any property is listed or assessed on or after the first day of June, and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time.

**Sec. 52.** A valid assessment is an essential prerequisite to any exercise of the taxing power. 6 Neb. 241. **Sec. 339.** 9 Neb. 375. Irregularities in the assessment of real estate may render a tax deed based on such assessment void; but if a land-owner does not take the hazard of an adverse tax title, and asks the aid of a court of equity to relieve him therefrom, he must do equity by paying, or offering to pay, the amount justly chargeable against his land. 10 Neb. 75, 166, 202. Accidental omissions of property, in making assessments for taxation, do not invalidate the tax upon other property. Omissions or exemptions purposely made under a misapprehension of the law, and in the belief that the property is not taxable, is not a sufficient ground for enjoining the collection of a tax upon other property, otherwise legally imposed. 10 Neb. 216.

tion to enter in said register of qualified voters the name of every person who shall apply to him to be registered, and who shall satisfy him that he is qualified to vote under the provisions of the election laws of the state, or who shall prove to his satisfaction that he will be of age, and so qualified to vote, on or before the day of the next ensuing election.

**Sec. 7. [Registration—Time—Place.]**—It shall be the duty of said officer of registration to sit at some convenient place in the voting district for which he is appointed, on the first Monday of September, of each year, and continue in session for that day or until he shall complete the list of voters, and shall give notice of the time and place of sitting, at least seven days before the day of sitting, publication in some newspaper published in the city in which such registration is to be made, and in case of making a change in the place of sitting, he shall once publish, in manner and form aforesaid, at least three days before sitting, notice of such change as herein prescribed. Said notice and publication to be paid for by the proper city.

**Sec. 8. [Daily sessions.]**—That said officer of registration, for the purpose of facilitating him in the discharge of his duties, shall sit on the days for registration, from 9 o'clock A. M., until 5 o'clock P. M.; *Provided, however,* That, in his discretion, he may take a recess at noon not to exceed one hour's time.

**Sec. 9. [Lists—Publication—Correction—Delivery.]**—It shall be the duty of said officer of registration, as soon as practicable after the lists are complete as aforesaid, and before the fourth Monday of September, to make, or cause to be made, a certified list of all the names of persons duly registered by him, qualified voters in his election district, and cause the same to be written, printed, and made public by posting the same in at least three public places in his said election district where said registration has been made, and publish the same in some newspaper to be selected by him, if one be published in the city in which registration has been made, accompanying said list with a notice for persons interested to appear before him at the place, and during the hours of registration, on the Monday, and as much longer as may be in his judgment be necessary of the next week preceding the week in which the election is to be held, make additions, to correct any omissions, to strike off any name that is not entitled to the elective franchise, or other errors in said list, at which time the list of qualified voters shall be corrected and finally closed, and two copies of a corrected list or register of voters shall be made, and one copy thereof shall be deposited by the officer of registration with the county clerk of the county in which said registration is made, on or before the day of election, and the other copy shall be delivered to the judges of election for his said election district, in which said registration has been made. The county clerk shall file the list thus delivered to him, and preserve the same with the records in his office, subject to examination as other public records.

**Sec. 10. [Registrar's powers.]**—That said officer of registration while discharging the duties imposed by this act, shall have and exercise the powers of justice of the peace, for the preservation of order around the place of registration, can compel the attendance of witnesses for the purpose of ascertaining the qualifications of persons to be registered; he shall have power to issue summonses, attachments, and commitments to any sheriff or constable, or special constable appointed by him for the purpose, who shall serve such process, of [as] if issued by any court of record, or justice of the peace; such officer shall receive the same fees, and in the same manner as allowed by law for the same duties in criminal cases, but said officer of registration shall not receive any fee whatsoever, except that heretofore provided, as per diem, which shall be paid by their respective cities.

**Sec. 11. [Change of residence.]**—If any person who has been registered as a legal voter in one district, shall move into another, he shall take from the officer of registration a certificate of the facts of his registration and removal. Upon his satisfying the above named officers that he has removed, the certificate



shall issue, and shall be received by the judges of election as evidence of his right to vote, which certificate shall be returned with the poll books to the county clerk, and be filed by him as other county records, and preserved.

SEC. 12. [**Division of district.**].—In case any city shall be divided or in any other manner so arranged as to form portions of different election districts, for the election of a senator, member of the house of representatives, or other officer or officers, a person to be entitled to vote for such officer or officers, must have been a resident of that part of the city in which he offers to vote, the time required by law next preceding the election, and be registered therein as a qualified voter; in case of a division of a ward or precinct, registrars of the ward or precinct divided shall continue to act as though no division had taken place, each registrar acting as such in the new precinct or ward where his residence may be. Registrars shall be appointed where none exist in the newly created wards or precincts, and boards of registration shall be filled whenever required in said precinct in the same manner as registrars are originally appointed.

SEC. 13. [**Unregistered voters disqualified—Challenge to registered voter.**].—The judges of election shall not receive or deposit the ballot of any person until they have first found his name on the list of qualified voters and have checked it thereon, and the same appearing on said list is sufficient evidence to the judges of election to receive and deposit the ballot, and no challenge shall be entertained.

SEC. 14. [**Lists—Examination.**].—The clerks of the several counties in this state in whose office said list of qualified voters is deposited and filed, shall permit examinations of the list of qualified voters to be made, only in the manner allowed in relation to other records in his said office, and in his presence or in the presence of his deputy; *Provided, however,* That said lists are under no circumstances to be taken from said office, or in any manner altered or changed.

SEC. 15. [**Violation of act by registrar—Penalty.**].—If any officer of registration shall knowingly, corruptly, and fraudulently, in violation of the provisions of this act, permit the name of any disqualified voter, he shall, upon conviction thereof, forfeit and pay a fine of not less than one hundred dollars, nor more than five hundred dollars, and in default of payment to be committed to the county jail till such fine is fully paid, each day in said jail counting as three dollars per day.

SEC. 16. [**Same by county clerk.**].—That if any clerk of any county with whom said lists herein provided are required to be deposited, shall violate any of the provisions of this act, or make any changes or alterations in said lists, or suffer the same to be done by others except as herein provided for, or shall neglect any of the duties herein imposed on him, he shall, on conviction thereof, forfeit and pay a fine of not less than two hundred dollars, or more than one thousand dollars, to be collected from his official securities.

SEC. 17. [**Same by judge of election.**].—That if any judge of election shall knowingly violate any of the provisions of this act, he shall, on conviction thereof, forfeit and pay a fine of not less than two hundred nor more than one thousand dollars, and shall be disqualified from holding office and from voting.

SEC. 18. [**False swearing—Penalty.**].—That any person swearing falsely, in violation to any matters connected herewith, or swearing falsely in relation to any matter touching his qualifications as a voter and his right to be registered as such, shall, on conviction thereof, be deemed guilty of perjury, and shall be sentenced to the state penitentiary for not less than one nor more than eight years, and be disqualified from voting and holding office.

SEC. 19. [**Application of act to all elections.**].—This act shall apply to municipal as well as county and state elections, and to special as well as general elections; the said registrar shall sit for one day, or more if necessary, in the week preceding the holding of a municipal or special election, for the purpose of adding and correcting a registration already made; notice shall be given of said

sitting as hereinbefore provided, and the same proceedings, so far as applicable, shall be observed as required in other cases provided in this act, except that the list when completed, shall be filed, in case of municipal elections, by the municipal clerk in his office as under the requirements of county clerks, and in case of municipal elections, the clerk of such incorporation shall draw his warrant of the treasurer thereof for the per diem of the registrar hereinbefore named.

**SEC. 20. [Deposition of register—Cities second class.]**—When a registrar shall resign or otherwise become disqualified, his book of registration shall be deposited with the county clerk of his county, and when the book of registration has been substantially filled, said registrar, upon depositing the same with the county clerk, is hereby authorized to draw another; *Provided*, The provision of this act shall extend to and include the cities of Lincoln, Plattsmouth, Fremont and Nebraska City.

**SEC. 21. [Registration in cities second class.]**—That so much of the act entitled "An act to provide for the registration of voters in cities of the first class, and certain cities of the second class," approved, February 27th, 1873, applies to the cities of "Nebraska City," "Lincoln," and "Fremont," be and the same is hereby repealed. [1875 § 1, 206.]

## CHAPTER 77.—REVENUE.

### ARTICLE I.—GENERAL PROVISIONS.

**SECTION 1. [Property taxable.]**—The property named in this section shall be assessed and taxed, except so much thereof as may be in this chapter exempted: *First*. All real and personal property in this state. *Second*. Moneys, credits, bonds, or stocks, and other investments, the shares of stock in incorporated companies and associations, and all other personal property, including property *in transitu* to or from this state, used, held, owned or controlled by persons residing in this state. *Third*. The shares of capital stock of banks and banking companies doing business in this state. *Fourth*. The capital stock of companies and associations incorporated under the laws of this state. [1873, 1, 276.]

**SEC. 2. [Property exempt.]**—The following property shall be exempt from taxation in this state: *First*. The property of the state, counties, and municipal corporations, both real and personal. *Second*. Such other property may be used exclusively for agricultural and horticultural societies, for schools, religious, cemetery, and charitable purposes; *Provided*, That in the assessment of real estate, encumbered by public easement, any depreciation occasioned by such easement shall be deducted in the valuation of such property; *Provided further*, That the increased value of lands by reason of live fences, fruit and forest trees grown and cultivated thereon, shall not be taken into account in the assessment thereof.

**SEC. 3. [School lands.]**—School lands sold under any provisions of any law of this state, or such as have been heretofore sold, shall not be taxable until the right to a deed shall have become absolute, except the value of the interest of such purchasers shall be taxable, which interest shall be determined by the amount paid and invested in improvements on such lands; *Provided*, That the increased value of such improvements by reason of live fences, fruit and forest trees, grown and cultivated on such lands, shall not be taken into account in assessing the value of such improvements.

**SEC. 4. [Personalty, how valued.]**—Personal property shall be valued as follows: *First*. All personal property, except as herein otherwise directed,

SEC. 21. "An act to repeal the law requiring the registration of voters in certain cities of the second class." Laws 1875, 206. Took effect Feb. 11, 1875.

ART. I. "An act to provide a system of revenue." Laws 1879, 276. Taking effect Sept. 1, 1879 "An act to provide for the assignment of tax certificate." Laws 1875, 109, being superseded by sec. 117 this article, is omitted.

SEC. 4. Debts due are "credits" and are to be assessed as property. 10 Feb. 1861.

able to ascertain the same. That the value of all property, moneys, and credits of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned, as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person, or body corporate, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and that as I verily believe, the full value thereof is set forth in the above returns (where the assessment has been corrected by a town board "except as corrected by the town board"), and that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

**SEC. 64. [Schedules delivered to county clerk].**—The assessor shall at the same time deliver to the county clerk all the schedules and statements of personal property which shall have been received by him, endorsed with the name of the person whose property is listed, and arranged in alphabetical order; and the clerk shall preserve the same in his office.

**SEC. 65. [Books open to inspection].**—The several assessment books shall be filed in the office of the county clerk, and there remain open to the inspection of all persons; *Provided*, That the county clerk in counties under township organization shall, in the month of April, deliver to the town clerks of the several towns in the county, the assessment books of their respective towns for the previous year, such books to be returned by the town clerks to the county clerk's office before the second Monday of June of the same year.

**SEC. 66. [Assessor's pay].**—Assessors and deputy assessors shall be paid at the rates allowed by law, for the time necessarily employed in making the assessment, out of the county treasury, and town assessors and their deputies out of the town treasury.

**SEC. 67. [Detailed account of time].**—Assessors and deputy assessors shall make out their accounts in detail, giving the date of each day which they shall have been employed, which account they shall verify under oath. The assessor shall not be entitled to compensation until he shall have filed the lists, schedules, statements, and books appertaining to the assessment of property for such year, in the office of the county clerk—the books to be accurately made and added up. An assessor or deputy assessor shall not be entitled to pay unless he has performed the labor and made return in strict compliance with law.

**SEC. 68. [Clerk to correct errors].**—The clerk, upon receipt of the assessment books of real property, shall correct all errors of whatsoever kind which he may discover, and add the name of the owner, if known, when the same does not already appear, and the description of all real property which has been omitted by the assessor, and is liable to taxation.

**SEC. 69. [Further corrections].**—If the assessor has listed and assessed any real property not returned by the auditor of public accounts to the clerk, the clerk shall immediately advise the auditor thereof, who shall ascertain if the same is taxable, and advise the clerk. If taxable, the clerk shall enter the same in the list of taxable property in his office; if not, he shall correct the assessment books.

**SEC. 70. [Equalization of assessments].**—The county board shall hold a session of not less than three nor more than ten days, for the purpose contemplated in this section, commencing on the third Monday in June, annually, after the return of the assessment books, and shall—*First*. Assess all such lands or lots as have been listed by the county clerk, and not assessed by the assessor. Said board may make such alterations in the description of real property as it shall deem necessary. *Second*. On the application of any person considering himself aggrieved, or who shall complain that the property of another is assessed too low,

SEC. 70. Under the former revenue law it was held that the board, when the assessment in one district was relatively higher or lower, might add to or take from the entire assessment in any particular district without notice to individual tax payers. But they could not do so without evidence and by mere arbitrary exercise of power. 8 Neb. 517. See also 7 Neb. 257. 3 Neb. 43. The decision of the board is subject to review on error in the district court. 3 Neb. 41. Where a tax payer feels himself wronged by the assessment or valuation of his own or other property for taxation, he has an adequate legal remedy by a resort to the county board of equalization, and, neglecting this, he can have no standing in a court of equity for relief. 10 Neb. 216

*Provided*, If the farm is situated in several townships or precincts, it shall be listed and assessed in the township or precinct in which the principal place of business on such farm shall be.

SEC. 10. [**Live stock.**].—Live stock in herds or not connected with a farm, shall be listed or assessed in the county where such live stock may be on the first day of April of the year for which the property is required to be listed. For the purposes of assessment and taxation the live stock mentioned in this section shall be deemed to be at the place where the owner or keeper thereof shall have his ranch, provided such ranch shall be in this state.

SEC. 11. [**Property in hands of agent.**].—The property of manufacturers and others, in the hands of agents, shall be listed and assessed at the place where the business of such agent is carried on.

SEC. 12. [**Purchaser's interest in exempted lands, personalty.**].—When real estate is exempt in the hands of the holder of the fee, and the same is contracted to be sold, the amount paid thereon by the purchaser, with the enhanced value of the investment and improvement thereon until the fee is conveyed, shall be held to be personal property, and listed and assessed as such, in the place where the land is situated.

SEC. 13. [**Property in transitu.**].—Personal property, *in transitu*, shall be listed and assessed in the county, township, city, or village where the owner resides; *Provided*, If it is intended for a business, it shall be listed and assessed at the place where the property of such business is required to be listed.

SEC. 14. [**Nursery stock.**].—The stock of nurseries, growing or otherwise, in the hands of nurserymen, shall be listed and assessed as merchandise.

SEC. 15. [**Gas companies.**].—The personal property of gas companies, except the pipes laid down, shall be listed and assessed in the town, village, district or city where the principal works are located. Gas mains and pipes laid in roads, streets, or alleys, shall be held to be personal property, and listed and assessed as such, in the town, district, village or city where the same are laid.

SEC. 16. [**Stage companies.**].—The horses, stages and other personal property of stage companies, or persons operating stage lines, shall be listed and assessed in the county, town, city or district where they are usually kept.

SEC. 17. [**Express and transportation companies.**].—The personal property of express or transportation companies, shall be listed and assessed in the county, township, precinct, city or village where the same is usually kept.

SEC. 18. [**Listing on behalf of others.**].—Persons required to list property on behalf of others, shall list it in the same place in which they are required to list their own; but they shall list it separately from their own, specifying in each case the name of the person, estate, company, or corporation to whom it belongs.

SEC. 19. [**Owner removing—Where assessed.**].—The owner of personal property removing from one county, town, city, village, or district to another, between the first day of April and the first day of June, shall be assessed in either, in which he is first called upon by the assessor. The owner of personal property moving into this state from another state, between the first day of April and the first day of June, shall list the property owned by him on the first day of April of such year, in the county, township, city, village, or precinct where he resides; *Provided*, If such person has been assessed, and can make it appear to the assessor that he is held for tax of the current year on the property, in another state, county, township, precinct, city, or village, he shall not be assessed again for said year.

SEC. 20. [**How place of listing fixed.**].—In all questions that may arise under this chapter, as to the proper place to list personal property, or when the same cannot be listed as stated in this chapter, if between several places in the same county, the place for listing and assessing shall be determined and fixed by the county board; and when between different counties, or places in different counties, by the auditor of public accounts; and when fixed in either case, shall be as binding as if fixed in this chapter.

**SEC. 21. [Schedule of property.]**—Persons required to list personal property shall make out and deliver to the assessor, at the time required, a schedule of the numbers, amounts, quantity and quality of all personal property in their possession, or under their control, required to be listed for taxation by them. It shall be the duty of the assessor to determine and fix the fair cash value of all items of personal property.

**SEC. 22. [Oath to schedule.]**—The schedule shall be signed and sworn to by the person making it, and the oath shall be administered either by the assessor or by any other officer authorized to administer oaths, and shall be certified to by him, and the oath shall be printed upon the blank form, and shall be in substance as follows :

I (A. B.), do solemnly swear or affirm that I have listed above (or within) all personal property, moneys, and credits, subject by the law to taxation, and owned by me, or required by law to be listed by me for any other person or persons (insert as guardian, husband, parent, trustee, executor, administrator, receiver, accounting officer, partner, agent, or factor, as the case may be,) according to the best of my knowledge.

(Signed)

A. B.

Subscribed in my presence, and sworn to before me this — day of —, 18—.

**SEC. 23. [Failure to make oath—Penalty.]**—Any assessor who shall return such schedule to the office of the county clerk, with his assessment roll, without the same having been sworn to as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be liable to a fine of not less than ten dollars, nor more than fifty dollars.

**SEC. 24. [Form of schedule.]**—Such schedule, when completed by the asses. or in extending in a separate column the value of such property, shall truly and distinctly set forth: *First.* The number of horses of all ages, and the value thereof. *Second.* The number of cattle of all ages, and the value thereof. *Third.* The number of mules and asses of all ages, and the value thereof. *Fourth.* The number of sheep of all ages, and the value thereof. *Fifth.* The number of hogs of all ages, and the value thereof. *Sixth.* Every steam engine, including boilers, and the value thereof. *Seventh.* Every fire and burglar-proof safe, and the value thereof. *Eighth.* Every billiard, pigeon-hole, bagatelle, or other similar tables, and the value thereof. *Ninth.* Every carriage and wagon, of whatsoever kind, and the value thereof. *Tenth.* Every watch and clock, and the value thereof. *Eleventh.* Every sewing or knitting machine, and the value thereof. *Twelfth.* Every piano forte, and the value thereof. *Thirteenth.* Every melodeon and organ, and the value thereof. *Fourteenth.* Every franchise, the description and the value thereof. *Fifteenth.* Every annuity and royalty, the description and the value thereof. *Sixteenth.* Every patent right, the description and the value thereof. *Seventeenth.* Every steamboat, sailing vessel, wharf boat, barge, or other water craft, and the value thereof. *Eighteenth.* The value of merchandise on hand. *Nineteenth.* The value of material and manufactured articles on hand. *Twentieth.* The value of manufacturers' tools, implements and machinery (other than boilers and engines, which shall be listed as such.) *Twenty-first.* The value of agricultural tools, and implements and machinery. *Twenty-second.* The value of gold or silver plate and plated ware. *Twenty-third.* The value of diamonds and jewelry. *Twenty-fourth.* The amount of moneys of bank, broker, or stock-jobber. *Twenty-fifth.* The amount of credits of bank, banker, broker, or stock-jobber. *Twenty-sixth.* The amount of moneys other than of bank, banker, broker, or stock-jobber. *Twenty-seventh.* The amount of credits other than of bank, banker, broker, or stock-jobber. *Twenty-eighth.* The amount and value of bonds, stocks, and state, county,

**SEC. 22.** The failure of the assessor to require those listing property to swear to the schedule does not render the assessment void. 9 Neb 376. The fact that a sworn list has been made by the owner will not justify the assessor in neglecting to assess property which he knows has been omitted. 7 Neb 141. 5 Neb 561. 9 Neb 376. Under the former revenue law [G. S. 900] when the duties of assessor commenced March 1, J. the owner of a bank purchased on the 29th of Feb. through a bank in New York government bonds, which, with the premium, amounted to \$41,650. The bonds were sold on the seventh of March. *Held.* 1.—a mere device to escape taxation, and that the money was taxable; 2,—that while the duties of the assessor commence on the first day of March, they continue until he returns his assessment roll to the county clerk, and all taxable property found by him in his precinct during that time is to be assessed. 10 Neb 159.

city, village, or school district warrants, and municipal securities of any kind whatever. *Twenty-ninth.* The amount and value of shares of capital stock of companies and associations not incorporated by the laws of this state, except shares of stock in national bank. *Thirtieth.* The value of property such person is required to list as a pawnbroker. *Thirty-first.* The value of property of companies and corporations other than property hereinafter enumerated. *Thirty-second.* The value of bridge property. *Thirty-third.* The value of property of saloons and eating houses. *Thirty-fourth.* The value of household or office furniture and property. *Thirty-fifth.* The value of investments in real estate, and improvements thereon, required to be listed under this chapter. *Thirty-sixth.* The value of other property required to be listed.

**SEC. 25. [Failure to schedule—Assessor to list—Perjury—Penalty.]**—Whenever the assessor shall be of opinion that the person listing property for himself or for any other person, company, or corporation, has not made a full, fair and complete schedule of such property, he may examine such person under oath in regard to the amount of property he is required to schedule, and for that purpose he is authorized to administer oaths; and if such person shall refuse to answer under oath, and a full discovery make, the assessor may list the property of such principal, according to his best judgment and information. If the person so examined shall swear falsely he shall be guilty of perjury and punished accordingly.

**SEC. 26. [Government bonds.]**—Any person, firm or corporation within this state required to list property for the purpose of taxation, and who claim that a portion of his or her funds are invested in government bonds, and therefore exempt from taxation, shall be required to exhibit to the assessor, to whom they are required to make returns of their such bonds, and the assessor shall enter on such list the species of bond or bonds so exhibited, together with the number, series, and amount of each bond respectively. And every person claiming to be owner of any such bond or bonds, and failing or refusing to so exhibit the same to the assessor for the purposes herein provided, shall not be entitled to any deduction on account of funds claimed to be invested in such government bonds. The assessor shall have the aggregate amount so claimed to be so invested added to his list, and the assessor as so much additional moneys and credits as herein provided.

**SEC. 27. [Credits—Rules for listing.]**—In making up the amount of property for which any person is required to list for himself, or for any other person, company or corporation, he shall be entitled to deduct from the gross amount of credits the amount of all *bona fide* debts owing by such person, company or corporation to any other person, company, or corporation, for a consideration received; but such acknowledgment of indebtedness not founded on actual consideration, but when received to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others, shall be deducted as the person making out the statement believes he is legally and actually bound, and will be compelled to pay on account of the inability or insolvency of the principal debtor; and if there are other sureties who are able to contribute then only so much as the surety in whose behalf the statement is made is bound to contribute; *Provided*, That nothing in this section shall be so construed as to apply to any bank, company, or corporation exercising banking powers or privileges, or to authorize any deductions allowed by this section from the amount of any other item of taxation than credits.

**SEC. 28. [Same.]**—No person, company, or corporation shall be entitled to any deduction from the amount of any bonds, stocks, or money loaned, or account of any bond, note or obligation of any kind, given to any insurance company on account of premiums or policies, nor on account of any unpaid subscriptions to any religious, literary, scientific, or charitable institution or society, nor on account

of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated, and no person shall be entitled to any deduction on account of any indebtedness contracted for the purchase of United States bonds or other non-taxable property.

**SEC. 29. [Same—Oath—False statement—Penalty.]**—In all cases where deductions are claimed from credits, the assessor shall require that such deductions be verified by the oath of the person, officer, or agent claiming the same; and any such person, officer or agent, knowingly or wilfully making a fraudulent statement of such deductions claimed, so verified by affidavit, shall be liable to a fine of not less than \$100, nor more than \$1,000, in addition to all damages sustained by the state, county or local corporation, to be recovered in any proper form of action in any court of competent jurisdiction, in the name of the state of Nebraska. Such fines, when recovered, shall be paid into the county treasury, and the damages, when collected, shall be paid to whom they belong. The assessor shall preserve the statement of deductions thus claimed, so verified by affidavit, and when he returns the assessment books, shall file the same with the county clerk, to be kept on file in his office for two years, and at the expiration of such time, said statement of deductions shall be destroyed by said clerk, but in the meantime shall be subject only to the inspection of officers charged with the execution of this law.

**SEC. 30. [Listing property of bankers, brokers, and stock jobbers.]**—Every bank (not incorporated), banker, broker, or stock jobber, shall, at the time fixed by this chapter for listing personal property, make out and furnish the assessor a sworn statement, showing: *First.* The amount of property on hand or in transit. *Second.* The amount of funds in the hands of other banks, bankers, brokers, or others, subject to draft. *Third.* The amount of checks, or other cash items, the amount thereof not being included in either of the preceding items. *Fourth.* The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid. *Fifth.* The amount of bonds and stocks of every kind, state and county warrants, and other municipal securities, and shares of capital stock of joint stock of other companies or corporations, held as an investment, or any way representing assets. *Sixth.* All other property appertaining to said business other than real estate (which real estate shall be listed and assessed as other real estate is listed and assessed under this act.) *Seventh.* The amount of deposits made with them by other parties. *Eighth.* The amount of all accounts payable, other than current deposit accounts. *Ninth.* The amount of bonds and other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item. The aggregate amount of the first, second, and third items in said statement, shall be listed as moneys. The amount of the sixth item shall be listed the same as other similar personal property is listed under this chapter. The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the fourth item of said statement, and the amount of the remainder, if any, shall be listed as credits. The aggregate amount of the ninth item shall be deducted from the aggregate amount of the fifth item of such statement, and the remainder shall be listed as bonds or stocks.

**SEC. 31. [Pawnbrokers.]**—Every person or company engaged in the business of receiving property in pledge, or as security for money or other thing advanced to the pawnor or pledger, shall be held to be a pawnbroker, and shall, at the time required by this chapter, return, under oath, the value of all property pledged and held by him as a pawnbroker, on hand on the first day of April, annually, and taxes shall be charged upon the fair cash value of such property, to such pawnbroker, the same as other property.

**SEC. 32. [Capital stock of corporations.]**—Bridge, express, ferry, gas, manufacturing, mining, savings bank, stage, steamboat, street railroad, transportation, and all other companies and associations incorporated under the laws of

this state, except insurance companies, shall, in addition to the other property required by this act, to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly: *First.* The name and location of the company or association. *Second.* The amount of capital stock authorized, and the number of shares into which such capital stock is divided. *Third.* The amount of capital stock paid up. *Fourth.* The market value, or if no market value then the actual value of the shares of stock. *Fifth.* The total amount of all indebtedness, except the indebtedness for current expenses—excluding from such expenses the amount paid for the purchase or improvement of property. *Sixth.* The assessed valuation of all its real and personal property (which real and personal property shall be listed and valued as other real and personal property is listed and assessed under this chapter). The aggregate amount of the fifth and sixth items shall be deducted from the aggregate value of its shares of stock, as provided by the fourth item, and the remainder, if any, shall be listed by the assessor in the name of such company or corporation as capital stock thereof. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information which he can obtain.

**SEC. 33. [State and national banks, how assessed.]**—The stockholders in every bank located within this state, whether such bank has been organized under the laws of this state or of the United States, shall be assessed and taxed on the value of their shares of stock therein, in the county, town, precinct, village, or city where such bank or banking association is located, and elsewhere, whether such stockholders reside in such place or not. Such shares shall be listed and assessed with regard to the ownership and value thereof, as they existed on the first day of April, annually, subject, however, to the restriction that taxation of such shares shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of this state, in the county, town, precinct, village, or city where such bank is located. The shares of capital stock of national banks not located in this state, held in this state, shall not be required to be listed under the provisions of this act.

**SEC. 34. [Same—List of stockholders to be kept.]**—In each such bank there shall be kept at all times a full and correct list of the names and residences of its stockholders, and of the number of shares held by each; which list shall be subject to the inspection of the officers authorized to assess property for taxation; and it shall be the duty of the assessor to ascertain and report to the county clerk a correct list of the names and residences of all stockholders in any such bank with the number and assessed value of all such shares held by each stockholder.

**SEC. 35. [Same—Shares, how listed.]**—The county clerk, to whom the returns are made, shall enter the valuation of such shares in the tax lists, in the names of the respective owners of the same, and shall compute and extend the taxes thereon the same as against the valuation of other property in the same locality.

**SEC. 36. [Same—Taxes on shares, how collected—Lien.]**—The county clerk, collector of taxes, and the officer or officers authorized to receive taxes from the county collector, may all, or either of them, have an action to collect the tax assessed on any share or shares of bank stock from the avails of the sale of such shares of stock, and the tax against such share or shares shall be and remain a lien thereon till the payment of such tax.

**SEC. 37. [Dividends to be held for taxes—Shares sold.]**—For the purposes of collecting such taxes, it shall be the duty of every such bank, or managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes levied on their shares of stock, respectively, until it shall be made to appear to such bank or its officers that such taxes have been paid; and any officer of any such bank who shall pay over or authorize the paying over of any such dividend or dividends or any portion thereof, contrary to the provisions of this section, shall there-



become liable for such tax; and if the said tax shall not be paid, the collector of taxes where said bank is located shall sell said share or shares to pay the same, like other personal property. And in case of sale the provision of law in regard to the transfer of stock when sold on execution, shall apply to such sale.

**SEC. 38. [Insurance companies, how taxed.]**—Each and every insurance company transacting business in this state shall be taxed upon the gross amount of premiums received within the state during the year previous to the year of listing in the county where the agent conducts the business, and the agent shall render the list and be personally liable for the tax; and if he refuses to render the list, or to make affidavit that the same is correct to the best of his knowledge and belief, the amount may be assessed according to the best knowledge and discretion of the assessor. Insurance companies shall be subject to no other taxation under the laws of this state, except taxes on real estate, and the fees imposed by the chapter on insurance. But the provisions of this section shall not apply to companies having no capital stock, and doing business exclusively as mutual companies.

**SEC. 39. [Railroad and telegraph property—Listing.]**—The president, secretary, superintendent, or other principal accounting officers within this state, of every railroad or telegraph company, whether incorporated by any law of this state or not, when any portion of the property of said railroad or telegraph company is situated in more than one county, shall list and return to the auditor of public accounts for assessment and taxation, verified by the oath or affirmation of the person so listing, all the following described property belonging to such corporation on the first day of April of the year in which the assessment is made within this state, viz.: The number of miles of such railroad and telegraph line in each organized county in this state, and the total number of miles in the state, including the road-bed, right of way, and superstructures thereon, main and side tracks, depot buildings, and depot grounds, section and tool houses, rolling stock and personal property necessary for the construction, repairs, or successful operation of such railroad and telegraph lines; *Provided, however,* That all machine and repair shops, general office buildings, store houses, and also all real and personal property, outside of said right of way and depot grounds as aforesaid, of and belonging to any such railroad and telegraph companies shall be listed for purposes of taxation by the principal officers or agents of such companies, with the precinct assessors of any precinct of the county where said real or personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property. [Amended and took effect Feb. 28, 1881. 1881, chap. 70.]

**SEC. 40. [Assessment.]**—The return to the auditor of public accounts herein provided shall be made on or before the fifth day of April annually. If the return aforesaid be not received by said auditor by the tenth day of April, he shall thereupon proceed to obtain the facts and information aforesaid in any manner that may appear most likely to secure the same correctly, and for that purpose may address a written communication to the corporation or to some officers of the corporation who has failed to make the return aforesaid. As soon as practicable after the auditor has received the said return, or procured the information required to be set forth in said return, a meeting of the state board of equalization, consisting of the governor, state treasurer, and auditor, shall be held at the office of said auditor, and the said board shall then value and assess the property of said corporation at its actual value for each mile of said road or line, the value of each mile to be determined by dividing the sum of the whole valuation by the number of miles of such road or line. In making up such valuation or assessment the said board shall examine and consider the return herein required to be made, or the information procured by the auditor in default of such return, together with such other reliable information relative thereto as they may be able to procure; said board shall not assess the value of any machine or repair shop or general office buildings, store houses or any real or personal property situated outside of the right of way or depot grounds of such company. On or before the fifteenth day

of May, or so soon thereafter as the said board, or any two thereof, shall have made and determined said valuation and assessment, the auditor shall certify to the county clerks of the several counties in which the property of the aforesaid corporation, or any part thereof, may be situated, the assessment per mile so made on the property of such corporation, specifying the number of miles and amount in each of such counties. All such property shall, for the purpose of taxation, be deemed "personal property," and placed on the tax list as hereinafter provided. [Amended and took effect Feb. 28, 1881. 1881, chap. 70.]

**SEC. 41. [False schedule—Penalty.]**—If any person or corporation shall give a false or fraudulent list, schedule, or statement, required by this act, or shall fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable personal property which he is required to list under this act, he or it shall be liable to a penalty of not less than \$10 nor more than \$100, to be recovered in any proper form of action, in the name of the state of Nebraska, on the complaint of any person. Such fine, when collected, to be paid into the county treasury.

**SEC. 42. [Same—Perjury.]**—Whoever shall wilfully make a false list, schedule, or statement, under oath, shall, in addition to the penalty provided in the preceding section, be liable as in the case of perjury.

**SEC. 43. [Realty—When listed.]**—All real property in this state, subject to taxation under this act, including real estate becoming taxable for the first time, shall be listed to the owners thereof, by such owners, their agents, county clerks or assessors, or the county board, and assessed with reference to the amount owned on the first day of April in each year, including all property purchased on that day; *Provided*, That no assessment of real property shall be considered as illegal by reason of the same not being listed or assessed in the same name of the owner or owners thereof.

**SEC. 44. [Same.]**—The owner of property on the first day of April in any year, shall be liable for the taxes of that year. The purchaser of property on the first day of April shall be considered as the owner on that day.

**SEC. 45. [Assessment books, how made.]**—The county clerk shall make up for the several townships or precincts in his county, in books to be provided for that purpose, by the auditor of public accounts, the lists of lands and lots to be assessed for taxes. Such books shall also contain sufficient space with suitable columns for the names of persons and the amounts, kinds, and value of personal property required by law to be listed according to the schedule set forth in section twenty-four. When a whole section, half section, quarter section, or half-quarter section belongs to one owner, it shall, at the request of the owner or his agent, be listed as one tract, and when all lots in the same block belong to one owner, they shall, at the request of the owner or his agent, be listed as a block. When several adjoining lots in the same block belong to the same owner, they shall, at the request of the owner or his agent, be included in one description; *Provided*, That when any tract or parcel of real estate is situated in more than one township or precinct, or in more than one school, road, or other district, the portion thereof in each shall be listed separately. Said clerk shall enter in the proper column, opposite the respective tracts or lots, the names of the owners thereof, so far as he shall be able to ascertain the same. Said books shall contain columns in which may be shown the number of acres or lots improved, and the value thereof; the number of acres or lots not improved, and the value thereof; the total value, and such other columns as may be required.

**SEC. 46. [Separate books.]**—Separate books shall be made for the assessment of property and collection of all taxes and special assessments thereon, within the corporate limits of cities, towns and villages, if ordered by the county board, except where such cities, towns, or villages are included within the limits

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SEC. 43. A government homestead becomes liable to taxation as soon as the owner has a right to make final proof and complete his title. 5 Neb. 401. And lands purchased by private entry from the United States, become so as soon as the sale is completed by a payment of the purchase money. 6 Neb. 128.

SEC. 45. A failure to list in the name of the owner will not render the tax void. 9 Neb. 374.

of any township in cities under township organization, and except in cities of the first class.

**Sec. 47. [Lists compared.]**—The county clerk shall cause such lists to be carefully compared with the list of taxable real property on file in his office.

**Sec. 48. [Books ready—Delivery to assessor.]**—The county clerk shall cause such assessment books, and all blanks necessary to be used by the assessor in the assessment of real and personal property, to be in readiness for delivery to the assessor on or before the first day of April in each year.

**Sec. 49. [Assessors to call for books, etc.—Failure—Removal.]**—It shall be the duty of each assessor to call on the county clerk on or before the first day of April in each year, and receive the necessary books and blanks for the assessment of property, and the failure of any assessor so to do shall be deemed sufficient cause to declare his office vacant, and for the appointment of a successor.

**Sec. 50. [Additional lands.]**—If, after the delivery of such books to the assessor in any year, the clerk shall receive an abstract showing the entry of any lands or lots not contained in such books, it shall be his duty to furnish a list of the same to the proper assessor within five days after such abstract is received.

**Sec. 51. [Assessor's deputies.]**—If any assessor, for any cause whatever, shall be unable to perform the duties required of him within the time designated by law, he may, as the case may require, appoint one or more suitable persons to act as deputies to assist him in making the assessment, and may designate the district, or portion of the township, precinct, county, city or village in which such deputy or deputies are authorized to list and assess property. Such deputy assessors shall make their returns to the assessor.

**Sec. 52. [Realty, how assessed.]**—Assessors shall, between the first day of April and the first day of June of each year, actually view and determine, as nearly as practicable, the value of each tract or lot of land listed for taxation, as provided by this act, and set down in proper columns, in the book furnished him, the value of each tract or lot improved, the value of each tract or lot not improved, and the total value. He shall also set down, in separate columns, the number of acres in wheat, corn, oats, meadow, and other field products, the number of fruit, forest trees and grape vines, in that year.

**Sec. 53. [Additional lands added.]**—If the assessor discovers any real property, subject to taxation, which has not been returned to him by the clerk, he shall list and assess such property.

**Sec. 54. [Personalty, how assessed.]**—The assessor shall also, between the first day of April and June, proceed to take a list of the taxable personal property in his county, township, precinct, city, or village, and assess the value thereof in the manner following, to wit: He shall call at the office, place of doing business, or residence of each person required by this act to list property, and list his name, and shall require such person to make a correct statement of his taxable property, in accordance with the provisions of this act; and the person listing the property shall enter a true and correct statement of such property, in the form prescribed by this act, which shall be signed and sworn to, to the extent required by this act, by the person listing the property, and delivered to the assessor; and the assessor shall thereupon assess the value of such property, and enter the same in his books with the name of the parties in alphabetical order, and the numbers and kinds and values of the several species of property required to be listed, and their total value; *Provided*, If any property is listed or assessed on or after the first day of June, and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time.

Sec. 52. A valid assessment is an essential prerequisite to any exercise of the taxing power. 6 Neb. 241. 9 Neb. 339. 9 Neb. 375. Irregularities in the assessment of real estate may render a tax deed based on such assessment void; but if a land-owner does not take the hazard of an adverse tax title, and asks the aid of a court of equity to relieve him therefrom, he must do equity by paying, or offering to pay, the amount justly chargeable against his land. 10 Neb. 75, 166, 202. Accidental omissions of property, in making assessments for taxation, do not invalidate the tax upon other property. Omissions or exemptions purposely made under a misapprehension of the law, and in the belief that the property is not taxable, is not a sufficient ground for enjoining the collection of a tax upon other property, otherwise legally imposed. 10 Neb. 218.

**SEC. 55. [Owner, etc., sick or absent.]**—If any person required by this act to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office or usual place of residence or business of such person a written or printed notice, requiring such person to make out and leave at the place named by said assessor, on or before some convenient day named therein, the statement or schedule required by this act. The date of leaving such notice, and the name of the person required to list the property, shall be carefully noted by the assessor in a book to be kept for that purpose.

**SEC. 56. [Examination by assessor—Witnesses.]**—The assessor may examine, on oath, any person whom he may suppose to have knowledge of the amount or value of the personal property which the person so refusing is required to list. The assessor may take the proper form of action to compel the attendance of a witness.

**SEC. 57. [School district to be designated.]**—It shall be the duty of assessors, when making assessments of personal property, to designate the number of school district or districts in which each person assessed is liable for tax; which designation shall be made by writing the number of the district opposite each assessment in a column provided for that purpose in the assessment book.

**SEC. 58. [Property in several districts.]**—When the personal property of any person is assessable in several districts, the amount in each shall be assessed separately and the name of the owner placed opposite the amount.

**SEC. 59. [Failure to obtain statement or schedule—Assessor to fix value.]**—In all cases of failure to obtain a statement of personal property from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property, and assess the same as he believes to be the fair amount and value thereof.

**SEC. 60. [Owner may require list of valuation.]**—The assessor, when requested, shall deliver to the person assessed a copy of the statement of property hereinbefore required, showing the valuations of the assessor of the property so listed; which copy shall be signed by the assessor.

**SEC. 61. [Forms.]**—Assessors, in the execution of their duties, shall use the forms and pursue the instructions which shall, from time to time, be transmitted to them by the auditor of public accounts, or that may be furnished to them by the county clerk, or other officer, in pursuance of law.

#### REVIEW OF ASSESSMENT BY TOWN BOARD.

**SEC. 62. [Power of town board.]**—In counties under township organization, the assessor together with the town board, shall meet on the first Monday of June, for the purpose of reviewing the assessment of property in such town. And on the application of any person considering himself aggrieved, or who shall complain that the property of another is assessed too low, they shall review the assessment and correct the same, as shall appear to them just. No complaint that another is assessed too low shall be acted upon until the person so assessed, or his agent, shall be notified of such complaint, if a resident of the county. Any two of said officers meeting are authorized to act, and they shall continue in session three days, for the purpose of reviewing such assessment. Property assessed after the first Monday of June shall be subject to complaint to the county board, subject to the rules specified in this act.

**SEC. 63. [Return of assessor.]**—The assessor shall, on or before the second Monday of June of the year for which the assessment is made, return his assessment book to the county clerk, verified by his affidavit, substantially in the following form:

State of Nebraska, \_\_\_\_\_ county, ss. I \_\_\_\_\_ assessor of \_\_\_\_\_, do solemnly swear, that the book to which this is attached, contains a correct and full list of all real and personal property subject to taxation in \_\_\_\_\_, so far as I have been

**SEC. 63.** Failure of assessor to make and return oath is no ground for cancellation of tax certificates, or enjoining collection of taxes, the plaintiff not offering to pay taxes justly chargeable against the land. 10 Neb. 76, 121, 166, 201.

able to ascertain the same. That the value of all property, moneys, and credits of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned, as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person, or body corporate, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and that as I verily believe, the full value thereof is set forth in the above returns (where the assessment has been corrected by a town board "except as corrected by the town board"), and that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

**SEC. 64. [Schedules delivered to county clerk.]**—The assessor shall at the same time deliver to the county clerk all the schedules and statements of personal property which shall have been received by him, endorsed with the name of the person whose property is listed, and arranged in alphabetical order; and the clerk shall preserve the same in his office.

**SEC. 65. [Books open to inspection.]**—The several assessment books shall be filed in the office of the county clerk, and there remain open to the inspection of all persons; *Provided*, That the county clerk in counties under township organization shall, in the month of April, deliver to the town clerks of the several towns in the county, the assessment books of their respective towns for the previous year, such books to be returned by the town clerks to the county clerk's office before the second Monday of June of the same year.

**SEC. 66. [Assessor's pay.]**—Assessors and deputy assessors shall be paid at the rates allowed by law, for the time necessarily employed in making the assessment, out of the county treasury, and town assessors and their deputies out of the town treasury.

**SEC. 67. [Detailed account of time.]**—Assessors and deputy assessors shall make out their accounts in detail, giving the date of each day which they shall have been employed, which account they shall verify under oath. The assessor shall not be entitled to compensation until he shall have filed the lists, schedules, statements, and books appertaining to the assessment of property for such year, in the office of the county clerk—the books to be accurately made and added up. An assessor or deputy assessor shall not be entitled to pay unless he has performed the labor and made return in strict compliance with law.

**SEC. 68. [Clerk to correct errors.]**—The clerk, upon receipt of the assessment books of real property, shall correct all errors of whatsoever kind which he may discover, and add the name of the owner, if known, when the same does not already appear, and the description of all real property which has been omitted by the assessor, and is liable to taxation.

**SEC. 69. [Further corrections.]**—If the assessor has listed and assessed any real property not returned by the auditor of public accounts to the clerk, the clerk shall immediately advise the auditor thereof, who shall ascertain if the same is taxable, and advise the clerk. If taxable, the clerk shall enter the same in the list of taxable property in his office; if not, he shall correct the assessment books.

**SEC. 70. [Equalization of assessments.]**—The county board shall hold a session of not less than three nor more than ten days, for the purpose contemplated in this section, commencing on the third Monday in June, annually, after the return of the assessment books, and shall—*First*. Assess all such lands or lots as have been listed by the county clerk, and not assessed by the assessor. Said board may make such alterations in the description of real property as it shall deem necessary. *Second*. On the application of any person considering himself aggrieved, or who shall complain that the property of another is assessed too low,

**SEC. 70.** Under the former revenue law it was held that the board, when the assessment in one district was relatively higher or lower, might add to or take from the entire assessment in any particular district without notice to individual tax payers. But they could not do so without evidence and by mere arbitrary exercise of power. 8 Neb. 517. See also 7 Neb. 257. 3 Neb. 43. The decision of the board is subject to review on error in the district court. 3 Neb. 41. Where a tax payer feels himself wronged by the assessment or valuation of his own or other property for taxation, he has an adequate legal remedy by a resort to the county board of equalization, and, neglecting this, he can have no standing in a court of equity for relief. 10 Neb. 216

they shall review the assessment and correct the same as shall appear to be just. No complaint that another is assessed too low shall be acted upon until the person so assessed, or his agent, shall be notified of such complaint, if a resident of the county; *Provided*, That in the counties under township organization, that such application shall have been made to the town board of equalization, and been rejected by them. *Third*. It shall ascertain whether the valuations in one township, precinct or district bear just relation to all the townships, precincts, or districts in the county; and may increase or diminish the aggregate valuation of property in any township, precinct or district, by adding or deducting such sum upon the hundred as may be necessary to produce a just relation between all the valuations of property in the county, but shall in no instance reduce the aggregate valuation of all the townships, precincts or district below the aggregate valuation thereof, as made by the assessors; neither shall it increase the aggregate valuation of all the townships, precincts or districts, except in such an amount as may be actually necessary and incidental to a proper and just equalization. It may consider lands, village or city lots, and personal property, (except property assessed and valued by the state board of equalization,) separately, and determine a separate rate per cent. of addition or reduction for each of said classes of property, as may be necessary to a just equalization thereof.

**SEC. 71. [Omitted or invalid assessments].**—If, hereafter, for any reason any taxable real property shall escape taxation in any year, whether on account of an omission to assess the same, or because the assessment or levy of any tax therein, or any part thereof, shall be invalid, except for the reason that the same was not subject to taxation or was levied for an illegal or unauthorized purpose, and if for any reason, except as aforesaid, any tax levied thereon shall be recovered back by the payer thereof, or the payment thereof shall be prevented by the final judgment or process of any court, it shall be the duty of the county board, when sitting as a board of equalization in any subsequent year to assess said property at the proper valuation for the year, or years, for which said tax should have been levied thereon, and to levy thereon, upon such assessment at the time of levying other taxes in such subsequent year at the same rate of state, county, township, school district, city, village, and other levied taxes as might legally have [been] levied thereon for the year in which it shall have so escaped taxation, which tax and the levy thereof shall be in addition to all current and other taxes on the same property for such subsequent year, and [be] as valid for all purposes as though properly assessed and levied in the year in which such land so escaped taxation.

**SEC. 72. [Clerk's report to auditor].**—As soon as practicable after the assessment books are equalized and corrected by the county board, and on or before the tenth day of July annually, it shall be the duty of county clerks, upon receipt of the assessment books, to make out and transmit to the auditor an abstract of the assessment of property, showing the number, value, and average value of each kind of enumerated property, as shown by the assessment; the value of unenumerated property, and total value of personal property; the number of acres, value and average value of improved lands; the number of acres, value and average value of unimproved lands; the total number of acres, total value and average value per acre, of all lands; the number, value and average value of improved village or city lots; the number, value and average value of unimproved village or city lots; the total number of lots, total value and average value of all lots, and the total value of all property; the number of acres in cultivation of wheat, corn, oats, meadow, and other field products, and the number of fruit and forest trees and grape vines. Said abstract shall be made out on blanks, which it shall be the duty of the auditor to furnish county clerks for that purpose. The values to be given in said abstract shall be the valuations assessed by the assessor, and equalized and corrected as hereinbefore provided.

**SEC. 73. [Same—Assessments not all in].**—It shall be the duty of the county clerks, in case of failure of any assessor to make return or assessment

within the time specified in this act, to transmit a statement of the assessment in all the townships, precincts, cities, villages, or districts from which returns have been received, together with a statement of the amount of taxable property assessed in the defaulting townships, precincts, cities, villages or districts for the previous year.

**SEC. 74. [State board of equalization—Powers.]**—The governor, auditor of public accounts, and treasurer, (or the majority of them,) shall constitute the state board of equalization, and said board of equalization shall hold a session at the capital of the state, commencing on the third Monday in July in each year; and it shall be the duty of said board to examine the various county assessments, and to decide upon the rate of the state tax, the state school tax and the state sinking fund tax, to be levied for the current year, together with any other general or special taxes required by law to be levied, and to equalize and make the levy of such taxes throughout the state; but such equalization shall be made by varying the rate of taxation on the different counties, in case the said board of equalization are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors.

**SEC. 75. [Rate of state taxes.]**—The rate of the general state tax shall be sufficient to realize the amount necessary to meet appropriations made by the legislature for the year in which the tax is levied, not exceeding five mills on the dollar valuation. The rate of the state school tax shall not be less than one-half mill, nor more than one and one half mills on the dollar valuation; and the rate of the state sinking fund tax shall not be more than three fourths of a mill on the dollar valuation in any county in the state. [Amended Mar. 2. took effect June 1, 1881. 1881, chap. 71.]

**SEC. 76. [Auditor's statement to county clerk.]**—On or before the first Monday of August in each year, the auditor is required to transmit to the county clerk of each county a statement of the rate of taxation required in said county for the general state tax, the state school tax, and the state sinking fund tax, as directed to be levied and collected by the state board of equalization. Should the state board of equalization fail to fix the rate of taxation in any or all of the counties, then the auditor is required to notify the county clerk that the rate to be levied and collected in such county or counties is the maximum rate provided in the preceding section of this act.

**SEC. 77. [Levy of taxes for county purposes—Rate.]**—On the last day of their sitting as a board of equalization the county board shall levy the necessary taxes for the current year, including all county, township, city, school district, precinct, village, and other taxes required by law to be certified to the county clerk and levied by the county board. The rate of tax for county purposes shall not exceed one dollar and fifty cents on the one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of the present constitution, unless authorized by a vote of the people of the county, and shall be as follows: In counties under township organization, for ordinary county revenue, including the support of the poor (except when each town supports its own poor), not more than nine mills on the dollar valuation; for roads, not more than two mills on the dollar valuation; for county bridge fund, not more than four mills on the dollar valuation; for county sinking fund, not more than four mills on the dollar valuation, and labor tax as provided in the following section. In counties not under township organization, for ordinary county revenue, (including the support of the poor,) not more than nine mills on the dollar valuation; for roads, not more than three mills on the dollar valuation; for county bridge fund, not more than four mills on the dollar valuation; for county sinking fund, not more than three mills on the dollar valuation, and labor tax as provided in the following section. [Amended Feb. 28. Took effect June 1, 1881. 1881, chap. 72.]

**SEC. 77.** The power to levy must be distinctly given and if the limits fixed by the statute are transcended by a levy in excess of the amount authorized by law, it may affect titles acquired by a sale of the property for such illegal tax; but this will not excuse a party, praying for an injunction, from tendering the amount of taxes justly due from him. 7 Neb. 495. A tax levied as a sinking fund to pay floating indebtedness held void. 9 Neb. 453. 10 Id. 615.

**Sec. 78. [Labor tax for roads.]**—Every male inhabitant in each road district, being over the age of twenty-one years and under the age of fifty years, except paupers, idiots, and lunatics, shall be assessed by the assessors to pay a labor tax of three dollars. Said tax may be paid in cash or commuted for in labor in the manner provided for in the act on roads. Persons living in cities or incorporated villages who are liable by the provisions of law regulating cities or villages to pay a poll or labor tax, or work upon the streets thereof, shall not be assessed to pay the tax provided for in this section.

**Sec. 79. [Duties of authorities of cities, villages, etc.]**—The proper authorities of cities, villages, townships, and districts authorized by law to vote bonds or assess taxes (except cities of the first class) shall annually on or before the second Monday of June, certify to the county clerk the several amounts which they severally require to be raised by taxation, including all amounts due upon legal and valid bonds outstanding against such corporation.

**Sec. 80. [Tax list.]**—After the equalization by the county and state boards as hereinbefore provided, and the levy of taxes made by them, and before the first day of October, the county clerk shall transcribe the assessments of the several precincts, townships, cities, or villages, into a suitable book, to be provided at the expense of the state, properly ruled and headed with distinct columns, in which shall be entered the description of lands, number of acres and value, number of city and village lots and their value, value of personal property, and each description of tax, with a column for polls, one for payment and a number of columns for delinquent taxes of previous years.

**Sec. 81. [Consolidated tax.]**—All taxes which are uniform throughout any precinct or township, shall be formed into a single tax, entered upon the tax list in a single column, and be denominated a consolidated tax; and each tax receipt shall show the percentage levied for each separate fund.

**Sec. 82. [Same.]**—The tax list shall be completed by the county clerk by carrying out in a column by itself the consolidated tax as provided in the preceding section, with the labor tax, school district tax, and any irregular tax each in separate columns, and after adding up each column of said taxes he shall, in an abstract at the end of each precinct, township, city and village list, apportion the consolidated tax among the respective funds to which it belongs, according to the number of mills levied for each of said funds, showing a summary of each distinct tax.

**Sec. 83. [Warrant to county treasurer.]**—The tax list shall be completed and delivered to the county treasurer on or before the first day of October, annually, and before its delivery the county clerk shall attach a warrant under the seal of the county, which warrant shall be signed by said clerk, and shall in general terms command the said treasurer to collect the taxes therein mentioned according to law; but no informality therein, and no delay in delivering the same after the time above specified shall affect the validity of any taxes or sales, or other proceedings for the collection of taxes as provided for in this act.

**Sec. 84. [Tax list—Form.]**—The tax list, when completed, shall be the property of the county, and shall be substantially in the following form:



STATE LEVY.	
Insane patients.....	Mills.
General.....	"
Sinking.....	"
School.....	"
University.....	"
State bonds.....	"
Total.....	"
COUNTY LEVY.	
Poor fund.....	Mills.
General.....	"
Special bridge.....	"
Sinking.....	"
Int. Reg. bonds.....	"
Total.....	"

TAX LIST.....PRECINCT.....COUNTY, NEBRASKA,

FOR THE YEAR 18..

Owners' Names.	Description of Lands or Town Lots.						No. School District.	No. Road District.	State and County Consolidated Tax.	County and District Taxes.					Advertising.	Total.	No. of Receipt.	Remarks.
	Part of section or part of town.	Section or lot.	Town or block.	Range.	Acres.	Value.				Road Tax.	School District Tax.	School District Bond Tax.	Precinct Tax.	Poll Tax.				

SEC. 85. [Apportionment of railroad property].—Railroad and telegraph property assessed by the state board of equalization, as provided in section 40, shall be apportioned by the county clerk among the respective precincts, townships, school districts, road districts, cities, and villages in which the same may be, entered on the tax list and collected by the county treasurer.

SEC. 86. [Delinquent taxes to be entered].—In all cases where taxes are delinquent on any real property for any preceding year or years, it shall be the duty of the county clerk in making up the list for the current year, to enter the amount of the delinquent tax opposite the tract or parcel of real property against which it was charged, in a suitable column or columns, with the year or years in which the same was due, and the amount thereof shall be collected in like manner as tax on other real property for that year may be collected.

SEC. 87. [Collectors of taxes].—The county treasurers shall be *ex-officio* county collectors of taxes within and for their respective counties, and in counties under township organization, town treasurers shall be the collectors of taxes in their respective townships, and the treasurer of each city or village not included within the limits of any township shall be the collector of taxes therein.

SEC. 88. [Payment of taxes—Warrants receivable].—State warrants are receivable for the amount payable into the state treasury on account of tax levied for general state purposes. County warrants are receivable for the amount payable into the county treasury for general purposes. City warrants shall be received for the city general tax, village warrants for village general tax, and town warrants for the township general tax. State, county, city, village, or township taxes levied for the school fund, or sinking fund, shall be paid only in lawful money of the United States. State, county, city, village, or township taxes levied for or other special purposes, shall be paid only in lawful money of the United States, or by warrants drawn upon and payable out of the particular fund for the payment of the tax upon account of which they are tendered. Road and labor tax shall be paid as provided in the act on "roads."

SEC. 89. [Taxes, how collected].—No demand for taxes shall be neces-

SEC. 89. Under the revenue law of 1869 as amended in 1871, [G. S. 916] personal property was not only liable for personality taxes, but for taxes assessed on real estate, and under these provisions it was held that personality must be first exhausted before there could be a sale of the realty. 4 Neb. 139, (overruling 2 Neb. 377) 5 Id. 362. 7 Id. 122. 8 Id. 59, 123. By act of 1877, p. 43, the law was amended by leaving out the provision, requiring a levy on personal property for the satisfaction of taxes due on real estate, leaving the law from that time substantially as in secs. 89 and 105 of the above chapter.—The collector is not entitled to receive com-

sary, but it shall be the duty of every person subject to taxation under the laws of this state to attend at the treasurer's office, at the county seat, and pay his taxes; and if any person neglect so to attend and pay his personalty taxes until after the first day of November next after such taxes become delinquent, the treasurer is directed to levy and collect the same, together with the costs of collection, by distress and sale of personal property belonging to such person, in the manner provided by law for the levy and sale on execution, and the treasurer shall be entitled to the same fees for his services as are allowed by law to sheriffs for selling property under execution; *Provided*, That in case no personal property of the delinquent can be found, it shall be the duty of the treasurer, when directed so to do by order of the board of county commissioners of his county, to commence suit by civil action in the district court of said county in the same manner as other civil actions are commenced, and prosecute the same to judgment and collection by execution, attachment, or garnishment, as the case may require, and that no property whatever shall be exempt from levy and sale under process issued on the judgment obtained in such action; and in case judgment be recovered, costs shall follow the judgment without regard to the amount of said judgment; *Provided further*, That in case any person having personal property assessed and upon which the taxes are unpaid, shall, in the opinion of the treasurer, be about to remove out of the county, or in any other manner seek to put his personal property out of the reach of the treasurer, it shall be the duty of the treasurer to collect such taxes by distress, or by attachment, as the case may require, at any time after the tax duplicate has been placed in his hands. In case any person owing taxes remove, the treasurer shall, among other steps to collect such tax, forward when necessary such tax claim to the treasurer or tax collector at the adopted residence or place of abode of such tax debtor, and such taxes shall be collected at the latter place as other personal taxes, by distress or civil action as the case may require, and returned to the proper county, less such charges for collection as are hereinbefore provided. And such treasurer or tax collector to whom such tax claim shall be so forwarded is hereby authorized to commence and prosecute to judgment such civil action as may be necessary, in the district court of such county, in the name of the board of county commissioners of the county from which such tax claim shall be forwarded, immediately upon receipt thereof by him, upon which judgment, without regard to the amount thereof, the plaintiff shall recover costs, and such judgment shall have the same effect as hereinbefore provided when suit is brought in the county where such tax was levied.

SEC. 90. [**Distraining property.**].—When the treasurer distrains goods, and the owner shall refuse to give a good and sufficient bond for the delivery of said goods, on the day of sale, he may keep them at the expense of the owner, and shall give notice of the time and place of their sale within five days after the taking, in the manner constables are required to give notice of the sale of personal property under execution; and the time of sale shall not be more than twenty days from the day of taking, but he may adjourn the sale from time to time, not exceeding five days in all, and shall adjourn at least once when there are no bidders; and in case of adjournment, he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of keeping and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges.

SEC. 91. [**Duplicate lists—Receipt.**].—In counties under township organization, the county clerk shall make out a duplicate of the tax list for each township, and for each city and village not included within the limits of any township, and shall notify, either personally or by mail, each township, city or village treasurer, on or before the first day of December, that such list is com-

mission and penalties allowed unless he has made "distress and sale." A mere levy and payment without sale do not entitle him thereto. 5 Neb. 109. An action at law is the proper remedy to recover taxes illegally paid when the same have been paid under protest to prevent distress and cost. 6 Neb. 67. The treasurer has no authority to distrain property belonging to a decedent's estate for taxes due from deceased in his life time. 8 Neb. 188.

plete, and of the amount for which he is required to furnish a bond, as provided in the following section. To each duplicate list the county clerk shall attach a warrant directed to the proper collector, similar to that required in section 83, to be attached to the original tax list, and such warrant shall be full and complete authority for the collection of taxes on said duplicate as that attached to the original might or could have; and the county treasurer shall not receive or collect any of the taxes charged in any duplicate tax list so delivered, except the tax of non-residents of the township, city or village, until the same has been returned to him as hereinafter provided. The said county clerk shall procure for and deliver to each township collector, with said tax list, a tax receipt book, with a blank margin or stub, upon which the said township collector shall enter the number and date of the tax receipt given to each taxpayer, the amount of tax and by whom paid, which said tax receipt book shall be returned to the county clerk, with the said duplicate tax list, as hereinafter provided.

**SEC. 92. [Collector's bond—Oath.]**—Every township, city or village treasurer authorized to collect taxes as aforesaid, shall, on or before the tenth day of December, annually, execute a bond as collector of taxes, with two or more securities, to be approved by the county clerk, in double the amount of taxes to be collected by him, conditioned for the faithful execution of his duties as such collector. Signatures to such bond, signed with a mark, shall be witnessed, but in no other case shall witnesses be required. Said bond shall be substantially in the following form, to wit:

Know all men by these presents, that we, A. B. of—, in the county of—, in the state of Nebraska, as— collector, and C D and E F, of said county and state, as securities, are held and firmly bound unto the state of Nebraska in the penal sum of — dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Signed and sealed this — day of —, 18—

The condition of the foregoing bond is such that if the above bound A B shall perform all the duties required to be performed by him as collector of the taxes for the year, in the — of —, in the county of —, Nebraska, in the time and manner prescribed by law, and, when he shall be succeeded in office, shall surrender and deliver over to his successor in office all books, papers and moneys appertaining to his said office, then the foregoing bond to be void, otherwise to remain in full force.

"A. B.," "C. D.," "E. F."

He shall also take and subscribe an oath, to be indorsed on the back of the bond, substantially as follows:

I do solemnly swear that I will support the constitution of the United States, and the constitution and laws of the state of Nebraska, and that I will faithfully discharge the duties of the office of town (or district) collector, according to the best of my ability.

Such bond and oath shall be filed and recorded in the record of official bonds in the office of the county clerk.

**SEC. 93. [Failure to execute bond or take oath.]**—If such collector shall fail to execute the bond and take the oath prescribed in the preceding section, within the time required, his office, as such collector, shall be deemed vacant, and the county clerk shall immediately fill the same by appointment under his hand and the seal of the county, and such appointee shall hold the office as such collector and shall execute the bond, take the oath, and perform the duties of such collector as provided by law.

**SEC. 94. [Clerk's account with collector.]**—Upon the delivery of the tax lists to the collectors, the county clerk shall, in a book to be provided for that purpose, charge each collector with the total amount of each kind of tax to be collected by him, and said books shall be prepared so as to show in proper columns all amounts of each and every kind of tax paid over to the county treasurer, or accounted for in the manner hereinafter provided.

**SEC. 95. [Collections, how made.]**—In counties under township organization, every collector, upon receiving the tax book or books, shall proceed to collect the taxes therein mentioned, except taxes assessed against railroad and telegraph property as provided in section 40 of this act which taxes shall be collected

by the county treasurer as in counties not under township organization, and for that purpose shall call at least once on the person taxed, or at his place of residence or business, if in the town, city or village, of such collector, and shall demand payment of the taxes charged to him on his property.

**SEC. 96. [Collector's account to treasurer.]**—Each collector shall, every sixty days, render to the county treasurer a statement of the amount of all taxes collected by him, and each kind of tax, and at the same time pay over to said treasurer the amount so shown to be collected, except town taxes and taxes in cities and villages not included within the limits of any township. The officer to whom any such money may be paid shall deliver to the collector duplicate receipts therefor, showing the amount of each kind of tax paid over, one of which shall be filed with the county clerk, who shall give the collector credit therefor on his account.

**SEC. 97. [Collector's return and final settlement.]**—Each collector shall return the duplicate tax list to the county clerk, and make a final settlement for the amount of taxes placed in his hands for collection, on or before the first day of October next after receiving the tax book; *Provided*, That the county clerk may first notify in writing the several collectors upon what day within twenty days after the first day of October they shall appear at his office and make final settlement.

**SEC. 98. [Statement of delinquencies.]**—If any collector shall be unable to collect any tax on any property charged in the tax list, he shall at time of final settlement with the county clerk, make a statement of all real estate in said tax list on which the taxes remain due and unpaid, giving the name of the person to whom listed if entered on the tax list, and the amount of each kind of tax charged thereon, and showing in detail the name of each person charged with personal property tax, which has not been paid, the value of such property tax and the amount of each kind of tax so charged, and the cause of delinquency in each and every case; and such statement shall be accompanied by an affidavit that the same is true and correct, that the sums therein mentioned remain due and unpaid, and that to the best of his knowledge and belief none of the persons so named in said statement have any personal property within the county out of which the personalty tax can be collected. And in no case shall any collector be entitled to any abatements of the tax charged against him until said statement and affidavit are filed with the county clerk.

**SEC. 99. [Settlement of accounts.]**—Upon filing of said statement and affidavit the county clerk shall allow the collector credit for the amount of taxes therein stated; where the collector is a township, city, or village treasurer, he shall give the county clerk duplicate receipts in his name of office as such treasurer for the total amount of each kind of tax collected by him for township, city, or village purposes, and the county clerk shall give him credit therefor on his account and transmit to the proper township, city, or village clerk one of said receipts.

**SEC. 100. [Same.]**—Upon final settlement with collectors, as aforesaid, the county clerk shall deliver to the county treasurer the collector's tax lists, and shall charge such treasurer in the account required by law to be kept with him, with the taxes remaining due and unpaid therein.

**SEC. 101. [Suit on collector's bond.]**—If any collector shall fail to appear and make final settlement, or pay over the amount in his hands, when required in this chapter, the county clerk shall forthwith cause the bond of such collector to be put in suit, and recovery may be had thereon for the amount due from such collector as charged in his tax list, less the credits to which he may be entitled under the provisions of this chapter, and costs of suit. No act or settlement by such collector after the commencement of any such action, shall avoid his liability for costs of such suit.

**SEC. 102. [Payment on part of tract—Undivided share.]**—The collector shall receive taxes on part of any lot, piece, or parcel of land charged

with taxes, when a particular specification of the part is furnished. If the tax on the remainder of such lot or parcel of land shall remain unpaid, the collector shall enter such specification in his return, so that the part on which the tax remains unpaid may be clearly known. The tax may be paid on an undivided share of real estate. In such cases the collector shall designate on his record upon whose undivided share the tax has been paid.

**SEC. 103. [Entry of payment—Lost receipt—Evidence.]**—Whenever any person shall pay the taxes charged on any property, the collector shall enter such payment in his book, and give a receipt therefor, specifying for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description in the collector's book, in whole or in part of such description, as the case may be; and such entry and receipt shall bear the genuine signature of the collector or his deputy receiving such payment; and whenever it shall appear that any receipt for the payment of taxes shall be lost or destroyed, the entry so made may be read in evidence in lieu thereof. The collector shall enter the name of the owner or of the person paying tax, opposite each tract or lot of land when he collects the tax thereon, and the post office address of the person paying said tax.

**SEC. 104. [Tax receipt.]**—The tax receipt shall be substantially in the following form:

<b>STATE LEVY.</b>		
Insane Patients.....Mills	\$.....	Treasurer's Office.....
General....."		
Sinking....."		
School....."		
University....."		County, Neb. ....18.....
State bonds....."		
Total....."		Received.....
<b>COUNTY LEVY</b>		
Poor fund.....Mills		
General....."		
Special bridge....."		.....Dollars,
Sinking....."		100
Int. Reg. bonds....."		
Total....."		in full of the taxes for the year 18....., on the following described property.

Description.	Section	Town	Range	Acres	Amt. tax	Adv'tising	Interest	Total
Value, \$.....								

No.....

.....Treasurer.  
.....Deputy.

**SEC. 105. [When tax becomes delinquent.]**—On the first day of May of the year after which taxes shall have been assessed, all unpaid state, county, school, township, precinct, city and village taxes, except city taxes in cities of the first class, shall become delinquent, and shall draw thereafter ten per cent per annum, which interest shall be collected the same as the tax so due.

**SEC. 106. [County treasurer's cash book.]**—The county treasurer is required to keep a cash book, in which he shall enter an account of all money by him received, specifying, in proper columns provided for that purpose, the date of payment, the number of the receipt issued therefor, by whom paid, and on account of what fund or funds the same was paid, whether state, county, school, road, sinking fund or otherwise, and the amount paid in warrants, orders, or receipts, each in a separate column, and the total amount for which the receipt was given, in another column; and the treasurer shall keep his account of money received for and account of taxes, separate and distinct from moneys received on any other

account; and shall also keep his account of money received for and on account of taxes levied and assessed for any one year, separate and distinct from those levied and assessed for any other year; and all entries in said cash book of money received for taxes, shall be in the numerical order of the receipts issued therefor.

**SEC. 107. [Tax receipts numbered.]**—All receipts issued by the county treasurer for taxes paid to him by collector and others shall be numbered consecutively, commencing with number one on the first receipt issued for the taxes of any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, but shall keep a separate and distinct series of numbers of receipts issued for the taxes of each year for which the same have been levied and assessed in this state.

**SEC. 108. [Endorsement of payment on tax list.]**—Whenever any taxes are paid, and in counties under township organization after the return of the duplicate lists by township collectors, the treasurer shall write on the tax lists, opposite the description of the real estate, or personal property, whereon the same were levied, the word "paid," together with the date of such payment, and the name of the person paying the same.

**SEC. 109. [Sale of real estate for taxes—Notice.]**—On the first Monday of November, in each year, between the hours of nine o'clock A. M. and four o'clock P. M., the treasurer is directed to offer at public sale, at the court house or place of holding court in his county, or at the treasurer's office, all lands on which the taxes levied for state, county, township, village, city, school district, or any other purpose for the previous year still remain unpaid, and he may adjourn the sale from day to day, until all the lands, and lots, or blocks, have been offered. No notice of such sale by advertisement or otherwise shall be required, but in all cases the provisions of this chapter shall be sufficient notice to owners of the sale of their property.

**SEC. 110. [Purchaser—Homestead liable.]**—The person who offers to pay the amount of taxes due on any parcel of land, or town lot, or the smallest portion of the same is to be considered the purchaser, and when such purchaser shall designate the portion of any tract of land or town lot, for which he will pay the whole amount of taxes assessed against any such tract or lot the portion thus designated shall, in all cases, be considered an undivided portion. In all cases where the homestead is listed separately as a homestead, it shall be liable only for the taxes thereon.

**SEC. 111. [Re-sale.]**—The person purchasing any parcel or portion thereof shall forthwith pay to the treasurer the amount of taxes and costs charged thereon, and on failure to do so, the said parcel shall at once again be offered as if no such sale had been made. Such payments may be made in the same fund receivable by law in payment of taxes.

**SEC. 112. [Return of sale.]**—The treasurer shall keep a sale book showing the lands sold, the name of the purchaser, and the sums for which each tract was sold, and on or before the first Monday of December following the sale of real property, he shall file in the office of the county clerk of his county, a return thereof, as the same shall appear on said sale book, and such certificate shall be evidence of the regularity of the proceedings.

**SEC. 113. [Private sale.]**—After the tax sale shall have closed, and after the treasurer has made his return thereof to the county clerk, as provided in the preceding section, if any real estate remain unsold for want of bidders therefor, the county treasurer is authorized and required to sell the same at private sale, at his office, to any person who will pay the amount of the taxes, penalty and costs thereof for the same, and to make out duplicate receipts for the taxes on such real estate, and deliver one to the purchaser, and the other to the county

\* SEC. 110. The statute is notice to purchaser of condition of sale. A bidder must pay the purchase money. 7 Neb. 123. Lands can only be sold to those who pay the amount of all taxes, penalty, interest and costs. 10 Neb. 28.

SEC. 113. Private sale cannot be made until after the treasurer has made his report of public sales and filed the same in office of county clerk. 10 Neb. 27.

clerk, as hereinbefore provided, (with the additional statement inserted in the certificate of sale that such lands have been offered at public sale for taxes, but not sold, for want of bidders), on which he is required to write, "sold for taxes, at private sale;" and the treasurer is further authorized and required to sell as aforesaid, all real estate in his county on which taxes remain unpaid, and delinquent for any previous year or years.

**SEC. 114. [Failure of treasurer to attend sale—Malfeasance of treasurer.]**—If any treasurer shall fail to attend any sale of lands as required by this act, either in person or by competent deputy, he shall be liable to a fine of not less than fifty nor more than three hundred dollars, to be recovered by an action in the district court against the treasurer and his bondsmen. And if such officer or deputy shall sell, or assist in selling, any real property, knowing the same to be not subject to taxation, or that the taxes for which the same is sold have been paid, or shall knowingly and wilfully sell, or assist in selling, any real property for payment of taxes to defraud the owner of such real property, or shall knowingly or wilfully execute a deed for property so sold, he shall be liable to a fine of not less than one thousand nor more than three thousand dollars, or to imprisonment not exceeding one year, or to both fine and imprisonment, and to pay the injured party all damages sustained by any such wrongful act, and all such sales shall be void.

**SEC. 115. [Same—Purchaser at tax sale.]**—If any county treasurer shall hereafter be, either directly or indirectly, concerned in the purchase of any real property sold for the payment of taxes, he shall be liable to a penalty of not more than one thousand dollars, to be recovered in an action in the district court, brought in the name of the county against such treasurer and his bondsmen; and all such sales shall be void.

**SEC. 116. [Certificate of purchase—Form—Lien of purchaser.]**—The purchaser of any tract of land sold by the county treasurer for taxes, will be entitled to a certificate in writing, describing the land so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be signed by the treasurer, in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires a perpetual lien of the tax on the land, and if after the taxes become delinquent he subsequently pays any taxes levied on the same, whether levied for any year or years previous or subsequent to such sale, he shall have the same lien for them, and may add them to the amount paid by him in the purchase, and the treasurer shall make out a tax receipt and duplicate for the taxes on the real estate mentioned in such certificate, the same as in other cases, and shall write thereon, "sold for tax at public sale," or "sold for tax at private sale," as the case may be. If any person shall become the purchaser of more than one parcel of property, he may have the whole included in one certificate, but each parcel shall be separately described, and the amount paid may be entered in gross in said certificate. Such certificate shall be substantially in the following form, to wit:

COUNTY TREASURER'S CERTIFICATE OF TAX SALE.

*State of Nebraska,* \_\_\_\_\_ *County, ss:—I,* \_\_\_\_\_, treasurer of the county of \_\_\_\_\_, in the state of Nebraska, do hereby certify that the following described real estate in said county and state, to wit: (describing the same,) was, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, duly sold by me in the manner provided by law, for the delinquent taxes for the year 18\_\_\_\_ thereon, amounting to \_\_\_\_\_ dollars, including interest and penalty thereon, and the costs allowed by law, to \_\_\_\_\_ for the said sum of \_\_\_\_\_ dollars, he being the highest and best bidder for the same; (or, such lands having been offered at public sale for taxes, and not sold for want of bidders.)

**SEC. 116.** This is a re-enactment substantially of Sec. 61 G. S. 921. Under that section it was held that the lien did not extend beyond the time limited to redeem, and that an action to foreclose under G. S. 936, Sec. (118) would not lie until after the expiration of the two years allowed the owner to redeem, nor until there should be a failure of his title acquired under the law. 5 Neb. 365. But when the action was commenced by the owner to have a tax deed declared void, it was held that the court finding such deed void would when prayed for in the answer retain jurisdiction for the purpose of foreclosing and enforcing the lien of the defendant for taxes and interest. 8 Neb. 62. And see 8 Neb. 123, 9 Id. 379, and secs. 179-181 this chapter.

And I further certify, that unless redemption is made of said real estate, in the manner provided by law, the said \_\_\_\_\_ heirs or assigns, will be entitled to a deed therefor on and after the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_, on surrender of this certificate.

In witness whereof, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_.

\_\_\_\_\_  
Treasurer.

**SEC. 117. [Certificate assignable.]**—The certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee or his legal representative, all the right and title of the original purchaser; and the statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence of such assignment.

**SEC. 118. [Fees of treasurer.]**—The treasurer is authorized to demand fifty cents for each deed or certificate made by him on such sale, together with the fee of the notary public or other officer acknowledging the deed, but any number of parcels of land bought by any one person may be included in one deed, as may be desired by the purchaser; and whenever the treasurer makes a deed to land sold for taxes, he shall enter an account thereof in the sale book, opposite the description of the land conveyed.

**SEC. 119. [Redemption—Interest.]**—The owner or occupant of any land sold for taxes, or any person having a lien or interest thereon, may redeem the same at any time within two years after the day of such sale, by paying the county treasurer for the use of such purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest thereon at the rate of twenty per cent per annum from the date of purchase, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to said sale, and interest thereon at the same rate from the date of such payment; and the treasurer shall enter a memorandum of the redemption in the list of sales, and give a receipt therefor to the person redeeming the same, for which he may charge a fee of twenty-five cents, and shall hold the redemption money paid subject to the order of the purchaser, his agent or attorney; *Provided*, That infants, idiots, and insane persons may redeem any land belonging to them from such sale within two years after the expiration of such disability, on like terms as if redemption had been made within two years from the date of said sale, and from the date of each subsequent payment of taxes thereon, at the rate of twenty per cent. per annum on the several amounts so paid by the purchaser until redemption. Any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited.

**SEC. 120. [Sale for taxes of subsequent years.]**—If any purchaser of real estate sold for taxes under the provisions of this chapter shall suffer the same to be again sold for taxes, before the expiration of the last day of the second annual sale thereafter, such purchaser shall not be entitled to a deed for such real property until the expiration of a like term from the date of the second sale, during which time the land shall be subject to redemption upon the terms and conditions prescribed in this chapter; but the person redeeming shall be only required to pay, for the use of such first purchaser, the amount paid by him with interest at the rate of ten per cent per annum. The second purchaser shall be entitled to the amount paid by him, with interest as provided in the preceding section.

**SEC. 121. [Redemption by part owner.]**—Any person claiming an undivided part of any land sold for taxes, may redeem the same on paying such proportion of the purchase money, interest, principal and subsequent taxes as he shall claim of the land sold.

**SEC. 122. [Partial redemption.]**—In every case of a partial redemption, pursuant to the last section, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption, and the county treasurer shall convey accordingly.



**SEC. 123. [Notice to owner before delivery of tax deed.]**—Hereafter no purchaser, or assignee of such purchaser of any land, town or city lot, at any sale of lands or lots for taxes or special assessments due, either to the state or any county or any incorporated town or city within the same, or at any sale for taxes or levies authorized by the laws of this state, shall be entitled to a deed for the lands or lots so purchased, until the following conditions have been complied with, to wit: Such purchaser, or assignee shall serve or cause to be served, a written or printed or partly written and partly printed notice of such purchase, on every person in actual possession or occupancy of such land or lot, and also the person in whose name the same was taxed or specially assessed, if upon diligent inquiry he can be found in the county, at least three months before the expiration of the time of redemption on such sale, in which notice he shall state when he purchased the land or lot, in whose name taxed, the description of the land or lot he has purchased, for what year taxed or specially assessed, and when the time of redemption will expire. If no person is in actual possession or occupancy of such land or lot, and the person in whose name the same was taxed or specially assessed, upon diligent inquiry, cannot be found in the county, then such person or his assignee shall publish such notice in some newspaper printed in such county, and if no newspaper is printed in the county, then in the nearest newspaper that is published in this state to the county seat of the county in which such land or lot is situated; which notice shall be inserted three times, the first time not more than five months, and the last time not less than three months before the time of redemption shall expire.

**SEC. 124. [Same—Affidavit—Evidence—Perjury.]**—Every such purchaser or assignee by himself or agent, shall, before he shall be entitled to a deed, make an affidavit of his having complied with the conditions of the foregoing section, stating particularly the facts relied on as such compliance, which affidavit shall be delivered to the person authorized by law to execute such tax deed, to be by such officer entered on the records of his office, and carefully preserved among the files of his office, and which record or affidavit shall be *prima facie* evidence that such notice has been given. Any person swearing falsely in such affidavit shall be deemed guilty of perjury, and punished accordingly.

**SEC. 125. [Printer's fees.]**—In case any person shall be compelled to publish such notice in a newspaper, then, before any person who may have a right to redeem such lands or lots from such sale shall be permitted to redeem, he shall pay the officer or person who by law is authorized to receive such redemption money, the amount paid for printer's fee for publishing such notice, for the use of the person compelled to publish such notice as aforesaid. The fee for such publication shall not exceed \$1 for each tract or lot contained in such notice.

**SEC. 126. [When purchaser entitled to deed.]**—At any time within three years after the expiration of two years from the date of sale of any real estate for taxes or special assessments, if the same shall not have been redeemed, the county treasurer, on request, and on the production of the certificate of purchase, and upon compliance with the three preceding sections, shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the real estate described in such certificate.

**SEC. 127. [Tax deed—Form.]**—The deed so made by the county treasurer under the official seal of his office shall be recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs and assigns, the title of the property therein described without further acknowledgment or evidence of such conveyance, and said conveyance shall be substantially in the following form:

STATE OF NEBRASKA, — County. Whereas, at a public sale of real estate for the nonpayment of taxes, made in the county aforesaid, on the — day of — A. D. 18—,

**SEC. 123.** See Const. Sec. 3, Art. IX.

**SEC. 127.** A tax deed must conform substantially to the requirements of the statute under which it is issued. Under the former revenue law [G. S. 923] if the "seal of the county" was omitted the deed was void. 4 Neb. 321. So if the place of sale was omitted. 10 Neb. 38.

the following described real estate was sold, to wit: (here place description of real estate conveyed); and, *Whereas*, the same not having been redeemed from such sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the state of Nebraska necessary to entitle (insert him, her or them) to a deed of said real estate: *Now therefore*, know ye, that I, \_\_\_\_\_, county treasurer of said county of \_\_\_\_\_ in consideration of the premises and by virtue of the statutes of the state of Nebraska in such cases provided, do hereby grant and convey unto \_\_\_\_\_, his heirs and assigns forever, the said real estate hereinbefore described, subject, however, to any redemption provided by law.

Given under my hand and the seal of our court this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—  
 \_\_\_\_\_  
*County Treasurer.*

**SEC. 128. [Evidence recorded.]**—County clerks shall record the evidence upon which deeds are issued, and be entitled to the same fee therefor that may be allowed by law for recording deeds, and the county treasurer shall deliver the same to the county clerk for that purpose, and in case of the loss of any certificate, on being fully satisfied thereof by due proof, and bond given to the state of Nebraska in a sum equal to the value of the property conveyed, as in cases of lost notes or other commercial paper, the county treasurer may execute and deliver the proper conveyance, and file such proof and bond with the county clerk, to be recorded as aforesaid.

**SEC. 129. [Application to former sales.]**—The foregoing six sections shall apply to all sales of real estate for taxes heretofore made, as well as to such sales for taxes and special assessments hereafter to be made.

**SEC. 130. [Tax deeds evidence of what—Requisites to defeat tax title.]**—Deeds made by the county treasurer as aforesaid shall be presumptive evidence in all the courts of this state, in all controversies and suits in relation to the rights of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts: 1. That the real property conveyed was subject to taxation for the year or years stated in the deed; 2. That the taxes were not paid at any time before the sale; 3. That the real property conveyed had not been redeemed from the sale at the date of the deed; 4. That the property had been listed and assessed; 5. That the taxes were levied according to law; 6. That the property was sold for taxes as stated in the deed; 7. That notice had been served and due publication had, as required in section 123 of this chapter, before the time of redemption had expired. And it shall be conclusive evidence of the following facts: 1. That the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; 2. That the grantee named in the deed was the purchaser, or his assignee; 3. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed, or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale, and to vest the title in the purchaser were done, except in regard to the points named in this section, wherein the deed shall be presumptive evidence only. And in all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially as aforesaid by the treasurer, the person claiming title adverse to the title conveyed by such deed, shall be required to prove, in order to defeat the said title, either that the said real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of this chapter, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state, or that there had been an entire omission to list or assess the property, or to levy the taxes, or to sell the property; but no person shall be permitted to question the title acquired by a treasurer's deed without first showing that he, or the person under whom he claims title, had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the property

have been paid by such person, or the person under whom he claims title as aforesaid; *Provided*, That in any case where a person had paid his taxes, and through mistake in the entry made in the treasurer's books or in the receipt, the land upon which the taxes were paid was afterwards sold, the treasurer's deed shall not convey the title; *Provided further*, That in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, such owner may prove fraud committed by the officer selling the same or in the purchaser to defeat the same, and if fraud is so established such sale and title shall be void.

**SEC. 131. [County to hold purchaser harmless—Treasurer liable for errors].**—When by mistake or wrongful act of the treasurer, or other officer, land has been sold on which no tax was due at the time, or whenever land is sold in consequence of error in describing such land in the tax receipt, the county is to hold the purchase harmless by paying him the amount of principal and interest and costs to which he would have been entitled had the land been rightfully sold, and the treasurer, or other officer, and their bondsmen, will be liable to the county to the amount of their official bond; or the purchaser, or his assignee, may recover directly of the treasurer, or other officer, in an action brought to recover the same in any court having jurisdiction of the amount, and judgment shall be against him and his bondsmen; but the treasurer, or other officer, and their bondsmen, shall be liable only for their own and deputies' acts.

**SEC. 132. [School and university land].**—Whenever any school or university land bought on a credit is sold for taxes, the purchaser at such tax sale shall only acquire the interest of the original purchaser in such lands, and no sale of any such lands for taxes shall prejudice the rights of the state therein, or preclude the recovery of the purchase money or interest due thereon; and in all cases where real estate is mortgaged or otherwise encumbered to the school or university fund, the interest of the person who holds the fee shall alone be sold for taxes, and in no case shall the lien or interest of the state be affected by any sale of such encumbered real estate made for taxes.

**SEC. 133. [When land not subject to taxation sold].**—Whenever it shall be made to appear to the satisfaction of the county treasurer, either before the execution of a deed for real property sold for taxes, or if the deed be returned by the purchaser, that any tract or lot was sold which was not subject to taxation, or upon which the taxes had been paid previous to the sale, he shall make an entry opposite such tract or lot on the record of sale, that the same was erroneously sold, and such entry shall be evidence of the fact therein stated. And in such cases the purchase money shall be refunded to the purchaser as provided by this chapter.

**SEC. 134. [Action brought within three years].**—No action for the recovery of real property sold for the non-payment of taxes shall lie, unless the same be brought within three years after the treasurer's deed is made as above provided; *Provided*, That where the owner of such real property sold as aforesaid, shall, at the time of such sale be a minor or insane, or convict in a penitentiary, or under any other legal disability, three years after such disability shall be removed shall be allowed such person, his heirs, or legal representatives, to bring their action.

**SEC. 135. [Acts of officers de facto valid].**—In all suits and controversies involving the question of title to real property held under and by virtue of a treasurer's deed, all acts of assessors, treasurers, clerks, supervisors, commissioners, and other officers *de facto*, shall be deemed and construed to be of the same validity as act of officers *de jure*.

**SEC. 136. [When assessed to wrong persons].**—No sale of real prop-

SEC. 131. Where certain certificates of illegal tax sales were surrendered to the county commissioners, the illegality of the sales being admitted, but the particular causes not being shown, held that the purchaser could recover from the county the amount actually paid by him upon said certificates with 12 per cent. interest. 9 Neb. 330. Under section 71 [G. S. 924] which provided that "when by mistake or wrongful act of the treasurer, or other officer, land has been sold contrary to the provisions of this act," etc., it was held not to apply to a sale of land by the treasurer where the tax has been previously paid, but only to a sale made in the enforcement of a tax actually levied and delinquent, and where, in consequence of the omission of some requisite statutory step in making it, the purchaser fails to secure the title. 10 Neb. 568.

erty for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner, if the said property be in other respects sufficiently described.

**SEC. 137. [Certified copies of records, evidence.]**—The books and records belonging to the offices of the county clerk or county treasurer, or copies thereof, properly certified, shall be deemed sufficient evidence to prove the sale of any real property for taxes, the redemption thereof, or the payment of taxes thereon.

**SEC. 138. [Tax on real estate a lien.]**—The taxes assessed on real property shall be a lien thereon from and including the first day of April in the year in which they are levied, until the same are paid.

**SEC. 139. [Tax on personalty a lien.]**—The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed, from and after the time the tax books are received by the collector.

**SEC. 140. [Lien when tax paid by agent.]**—When property is assessed to any person as agent for another, or in a representative capacity, such person shall have a lien upon such property, or any property of his principal in his possession, until he is indemnified against the payment thereof, or if he has paid the tax, until he is reimbursed for such payment.

**SEC. 141. [Irregularities in assessments.]**—Irregularities in making assessments, and in making the returns thereof, in the equalization of property as now provided by law, shall not invalidate the sale of any real estate when sold by the county treasurer for delinquent taxes due thereon, nor in any manner invalidate the tax levied on any property or charged against any person.

**SEC. 142. [Other irregularities.]**—The following defects, omissions, and circumstances occurring in the assessment of any property for taxation, or in the levy of taxes, or elsewhere in the course of the proceeding from and including the assessment and to and including the execution and delivery of the deed of property sold for taxes, shall be taken and deemed to be mere irregularities within the meaning of the preceding section. The failure of the assessor to take or subscribe an oath or attach one to any assessment roll; the omission of a dollar mark or other designation descriptive of the value of figures used to denote an amount assessed, levied, or charged against any property, or the valuation of any property, upon any record; the failure to make or serve any notice mentioned in this act, except the notice mentioned in section 123 of this act; the failure or neglect of the county treasurer to offer any real estate for sale for delinquent taxes thereon at the time provided by law, provided the same be not sold sooner than is provided by this act, and the failure of the treasurer to adjourn such sale from time to time as required by law, or any irregularity or informality in such adjournment; the failure of the county treasurer to offer any real estate for sale at public sale which may afterwards be sold at private tax sale, and any irregularity or informality in the manner or order in which real estate may be offered for sale at public sale; the failure to assess any property for taxation, or to levy any tax within the time provided by law, and any irregularity, informality, or omission in any such assessment or levy; any defect in the description upon any assessment book, tax collector's book, or other record of any real or personal property assessed for taxation, or upon which any tax is levied, or which may be sold for taxes, provided such description be sufficiently definite to enable the county treasurer, tax collector, or other officer, or any person interested, to determine what property is meant or intended by the description, and in such case a defective or indefinite description on the assessment or collector's book, or in any notice or advertisement, may be made definite by the treasurer in the deed by which he may convey such property if sold for taxes, by conveying by a proper and definite description the property so defectively or indefinitely described; any other irregularity, informality, or neglect, or omission on the part of any officer, or in any proceeding, whether mentioned in this section or not; the neglect or

omission to tax or assess for taxation any other person or property; the over-taxation of persons or property liable to be taxed, including in an assessment a tax for an illegal purpose.

**SEC. 143. [Delinquent taxes of corporations.]**—That when any corporation doing business in this state shall fail or neglect to pay any tax assessed or charged against it, when the same shall become delinquent, it shall be lawful for the county treasurer to notify any agent or officer of said company in the county where such tax is delinquent, that the same is delinquent, and the amount due, and shall further notify such officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation, not exceeding the amount of tax due, to such county treasurer, and if such agent or officer shall fail to so pay over said moneys to the county treasurer, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars, nor more than five hundred dollars.

**SEC. 144. [Injunction—Replevin—Tax paid under protest.]**—No injunction shall be granted by any court or judge in this state to restrain the collection of any tax or any part thereof, hereafter levied, nor to restrain the sale of any property for the non-payment of any such tax, except such tax, or the part thereof enjoined, be levied or assessed for an illegal or unauthorized purpose, nor shall any person be permitted to recover by replevin, or other process, any property taken or distrained by the county treasurer or any tax collector for the non-payment of any tax, except such tax be levied or assessed for an illegal or unauthorized purpose; but in every case the person or persons claiming any tax, or any part thereof, to be for any reason invalid, who shall pay the same to the tax collector, or other proper authority, in all respects as though the same was legal and valid, such person may at any time within thirty days after such payment, demand the same in writing from the treasurer of the state, or of the county, city, village, township, district, or other subdivision, for the benefit, or under the authority, or by the request of which the same was levied, and if the same shall not be refunded within ninety days thereafter may sue such county, city, village, township, district, or other subdivision, for the amount so demanded, and if upon the trial it shall be determined that such tax, or any part thereof, was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases.

**SEC. 145. [Refunding taxes.]**—When any demand to refund taxes paid is made upon any treasurer, as provided in the preceding section, such treasurer shall transmit a copy of the same to the authorities authorized by law to audit and pay accounts against the state, county, city, township, district, or village, as the case may be, who shall pass upon the same as upon any other claim, but no claim for refunding such taxes shall be paid, unless it appears to the satisfaction of such authorities that the same was levied for an illegal or unauthorized purpose, or that the same property has been twice assessed in the same year, and taxes paid thereon, or that such property was not liable to taxation.

**SEC. 146. [No power to release taxes.]**—No county or township board, city council or village trustee shall have power to release, discharge, remit or commute any portion of the taxes assessed and levied against any person or property within their respective jurisdictions, for any reason whatever. And any taxes so discharged, released, remitted or commuted, may be recovered by civil action from the members of any such board, council or trustees, and the sureties on their official bonds, at the suit of any citizen of the county, township, city or village, as the case may be, and when collected shall be paid into the proper treasury. Nothing in this section contained shall be construed to prevent the proper authorities from refunding taxes paid, as provided in the preceding section, nor with the powers of any officers or board sitting as a board for the equalization of taxes.

**SEC. 147. [Taxes stricken from list.]**—Whenever it shall appear from

the return of the treasurer that any person charged with taxes on personalty, has removed out of the county, or has deceased and left no property out of which the taxes can be made, or if from any other cause it be impossible to collect such taxes, it shall be the duty of the county commissioners to cause the same, after the expiration of two years, in which time the treasurer shall use due diligence to collect the same, to be stricken from the tax list, and the county clerk shall certify the amount so stricken off to the auditor, who shall credit the county therewith in adjustment of the accounts of the county treasurer.

**SEC. 148. [List of lands to be procured by auditor.]**—A list of lands becoming taxable for the first time in each county of the state, shall be procured by the state auditor from the proper land officers, at the best prices for the state, and a list of the lands becoming so taxable in each of the several counties shall be forwarded by the auditor to the county clerk of each county on or before the fifteenth day of January of each year.

**SEC. 149. [Entries in treasurer's warrant book.]**—Each county treasurer is required to keep a book called the "warrant book," in which he shall enter every state, county, or other warrant or order by him paid, or received in payment of taxes, from township collectors or any other person, specifying the date at which the same was received and canceled, from whom received, the payee or person in whose favor it was drawn, its number and date, the amount for which it was drawn, the sum for which it was received, and the interest due thereon, and the treasurer shall keep his account of warrants and orders by him received for and on account of taxes, separate and distinct from such as are by him paid in cash.

**SEC. 150. [Redeemed warrants.]**—When the county treasurer of any county shall pay any county warrant drawn on him by the county board, or when he shall take, or receive any such warrant in payment for any tax, he shall write on the face of such warrant, "redeemed," and the date of redemption, and shall sign his name thereto.

**SEC. 151. [Treasurer or collector not to purchase warrants.]**—No county, city, township, or village treasurer or collector of taxes, shall either directly or indirectly, contract for, or purchase any warrant or order, or orders, issued by the county of which he is treasurer, at any discount whatever upon the sum due on such warrant or order or orders; and if any county, city, township or village treasurer or collector of taxes, shall so contract for, or purchase any such order, or warrant, he shall not be allowed in settlement, the amount of said order or warrant, or any part thereof, and shall also forfeit the whole amount due on such order or warrant, to be recovered by civil action, at the suit of the state of Nebraska, for the use of the school fund of the county.

**SEC. 152. [Peddler's tax.]**—A tax of thirty dollars, for state purposes, shall be levied on each peddler of watches, clocks, jewelry or patent medicines, and all other wares and merchandise, for a license to peddle throughout the state for one year.

**SEC. 153. [Peddler's license.]**—Such license may be obtained from the county clerk of any county, upon paying the proper tax to the treasurer thereof, and taking his receipt therefor.

**SEC. 154. [Peddling without license—Penalty.]**—Any person so peddling without a license is guilty of a misdemeanor, and the person actually peddling is liable, whether he be the owner or not, and upon conviction thereof shall be fined the sum of fifty dollars, and stand committed until the fine is paid, or he be discharged as provided by law; and if any peddler refuses to exhibit his license to any person requiring a view of the same, he shall be presumed to have none, and if he produces a license upon trial, such peddler shall pay all costs of prosecution.

**SEC. 155. [Treasurer's statement to county clerk.]**—On or before the first day of October, annually, and at such other times as the county board may direct, the county treasurer shall make out and file with the county clerk a state-

ment in writing, setting forth in detail the name of each person charged with personal property tax which he and other collectors have been unable to collect, by reason of the removal or insolvency of the person charged with such tax, the value of the property and the amount of tax, the cause of inability to collect such tax, in each separate case, in a column provided in the list for that purpose. Said treasurer shall, at the same time, make out and file with the county clerk a similar detailed list of errors in assessment of real estate, and errors in footing of tax books, giving in each case a description of the property, the valuation and amount of the several taxes and special assessments, and cause of error. The truth of the statement contained in such lists shall be verified by affidavit of the county treasurer.

**SEC. 156. [Credit on forfeited property.]**—If any lands or lots shall be delinquent for taxes or special assessments, the treasurer shall be entitled to a credit in his final settlement for the amount of the several taxes and special assessments thereon—the county to allow the amount of printers' fees thereon, and be entitled to said fees so allowed when collected; *Provided*, That the county treasurer shall not be entitled to credit for delinquent personal property until he has filed with the clerk an affidavit that he has been unable to collect the tax due thereon by reason of a want of personal property of the owner thereof, and that to the best of his knowledge and belief no personal property of any such owner is in the county. If the county board be in session on the first of October, it shall settle with and allow the county treasurer credit for such allowance as he may be legally entitled to.

**SEC. 157. [When treasurer to account with clerk.]**—If there be no session of the county board held at the proper time for settling and adjusting the accounts of the county treasurer, it shall be the duty of the treasurer to file the lists with the county clerk, who shall examine said lists and correct the same, if necessary, in like manner as said board is required to do. Said county clerk shall make an accurate computation of the value of the property and the amount of the delinquent tax and special assessments returned, for which the collector is entitled to credit.

**SEC. 158. [Clerk to certify to auditor.]**—The county clerk shall immediately, in either case, certify to the auditor of public accounts the valuation of property, and the amount of state taxes due thereon, for which the treasurer may be allowed credit.

**SEC. 159. [To local authorities.]**—The county clerk shall also, at the same time, certify to the several authorities or persons with whom the county treasurer is to make settlement, showing the valuation of property and amount of taxes and special assessments due thereon allowable to said treasurer in the settlement of their several accounts.

**SEC. 160. [Credits on final settlements—Examination of accounts.]**—The auditor and other proper authorities or persons shall, in their final settlements with the treasurer, allow him credit for the amount so certified; *Provided*, That if the auditor or such other proper authorities or persons shall have reason to believe that the amount stated in said certificate is not correct, or that the allowance was illegally made, he or they shall return the same for correction; and when the same shall appear to be necessary, in the opinion of the auditor or such other proper authorities or persons, he or they shall designate and appoint some competent person to examine the treasurer's books and settlement, and the person so designated and appointed shall have access to the treasurer's books and papers, appertaining to such treasurer's office or settlement, for the purpose of making such examination.

**SEC. 161. [Final order—Corrections.]**—In all cases when the adjustment is made with the county clerk, the county board shall, at the first session thereafter, examine such settlement, and if found correct shall enter an order to that effect; but if any omission or error is found, said board shall cause the same to be corrected and a correct statement of the facts in the case forwarded to the

auditor and other proper authorities or persons, who shall correct and adjust the treasurer's accounts accordingly.

**SEC. 162. [Settlement for state taxes.]**—The county clerk shall make out and deliver to the county treasurer, as soon as adjustment is made with the county board or county clerk, annually, the statements, certificates and lists appertaining to the settlement of the accounts of such treasurer; which statement, certificates and lists shall be made out in proper form, under his seal of office, on blanks which it is hereby made the duty of the auditor to furnish, annually, for that purpose. The treasurer shall deliver the same to the auditor, and make a final settlement of his accounts on or before the first day of November in each year; *Provided*, That in all cases where the statements, certificates and list appertaining to the final settlement of a treasurer are on file with the auditor, on or before the first day of November, the auditor shall not charge interest on the balance found due on the account of such treasurer, for fifteen days after mailing said auditor's statement showing balance due the state on such treasurer's account; *Provided further*, That this section shall not be held to relieve any collector from the payment of interest charged on his account by reason of failure to make payment to the state, at other time or times, as required by this or any other act of the legislature of this state.

**SEC. 163. [Duplicate statement to auditor.]**—The county clerk shall furnish a duplicate copy of said statement, duly certified, whenever requested so to do by the auditor. If the statement of credits herein required, or any of the items therein, are objected to by the auditor, he shall return the statement to the county clerk, stating his objections, and said clerk shall examine and correct or explain the same satisfactorily, and return the statement to said auditor.

**SEC. 164. [Overpayment refunded.]**—If any county treasurer shall have paid, or may hereafter pay, into the state treasury, any greater sum or sums of money than are legally and justly due from such collector, after deducting abatements and commissions, the auditor shall issue his warrant for the amount so overpaid, which shall be paid out of the fund or funds so overpaid on said warrant.

**SEC. 165. [When payments made into the state treasury.]**—The treasurers of the several counties shall pay into the state treasury all funds in their hands belonging thereto, on or before the tenth day of November in each year, and at such other times as the state treasurer shall require, and the funds so paid in shall be the identical state warrants, if any received, by the treasurer for payment of the taxes, or in coin, or in treasury notes of the United States.

**SEC. 166. [Same—How paid—Duplicate receipt.]**—Upon ascertaining the amount due to the state from any treasurer or other person, the auditor shall give such person a statement of the amount to be paid, and upon the presentation of such statement to the state treasurer, and the payment of the sum stated to be due, the treasurer shall give duplicate receipts therefor, one of which shall be filed in the auditor's office, and entered in a book to be kept for that purpose, and the other shall be countersigned by the auditor and delivered to the person making the payment; and no payment shall be considered as having been made until the treasurer's receipt shall be countersigned by the auditor as aforesaid.

**SEC. 167. [Interest on money due state.]**—Any treasurer failing to pay into the state treasury the amount due the state, on his account for state and other taxes, at the time or times required by this act, shall pay interest at the rate of ten per cent. per annum from the time the same became due until the same is paid; and it shall be the duty of the auditor to charge such interest to the account of every treasurer failing to pay at the time or times required by this act. In no case shall the auditor be permitted to remit such interest, unless satisfactory evidence from the county board is presented to him, showing, by official action taken by such board, lawful cause why the collector could not pay over, in part or in whole, the amount due on such treasurer's account with the state.

**SEC. 168. [Auditor's certificate of settlement.]**—Upon the final settlement of any account with the state, the auditor shall give the treasurer dupli-



cate certificates, under his seal of office, setting forth that said treasurer has settled and paid into the state treasury the full amount due from him on said account; and it shall be the duty of the treasurer to file one of said certificates in the office of the county clerk, within twenty days after receiving the same. If any treasurer shall neglect or refuse to file one of said certificates as above required, the county clerk shall leave a written notice at the office of said treasurer, requiring him to appear before the county board at their next session, and show cause why he has not filed the certificate aforesaid; and if the treasurer shall not show that he has paid over the full amount due from him, and make a final settlement with the state and county, or that he has a lawful excuse for failing to do so, his office as treasurer shall be declared vacant by said board, and the same filled as in other cases of vacancy by reason of death or otherwise.

**SEC. 169. [Treasurer to report and pay cities, etc.]**—The county treasurer shall report and pay over the amount of tax and special assessments, due to towns, districts, cities, villages, corporations and persons, collected by him, when demanded by the proper authorities or persons.

**SEC. 170. [Failure to make report.]**—Any county treasurer failing to make reports and payments hereinbefore required, for five days after demand made as aforesaid, the auditor or such other authorities or persons, may bring suit upon the bond.

**SEC. 171. [To account and pay.]**—If any county treasurer fails to account and pay over as required in the preceding sections, his office may be declared vacant by the county board, as provided in section 168.

**SEC. 172. [Liability of collector on bond.]**—The bond of every county, town or district collector shall be held to be security for the payment by such collector to the state treasurer, county treasurer, and the several cities, towns and villages, and proper authorities and persons, respectively, of all taxes and special assessments which may be collected or received by him on their behalf, by virtue of any law in force at the time of giving such bond, or that may be passed or take effect thereafter.

**SEC. 173. [Suit against collector by auditor.]**—Upon the failure of any county treasurer to make settlement with the auditor, or the auditor shall sue the treasurer and his sureties upon the bond of such treasurer, or sue the treasurer in such form as may be necessary, and take all such proceedings, either upon such bond or otherwise, as may be necessary to protect the interests of the state.

**SEC. 174. [Jurisdiction and power of court.]**—When suit is instituted in behalf of the state, it may be in any court of record in this state having jurisdiction of the amount; and process may be directed to any county in the state. If any proceeding against any officer or person whose duty it is to collect, receive, settle for or pay over any of the revenues of the state, whether the proceeding be by suit on the bond of such officer or person, or otherwise, the court in which such proceeding is pending shall have power, in a summary way, to compel such officer or person to exhibit on oath a full and fair statement of all moneys by him collected or received, or which ought to be settled for or paid over, and to disclose all such matters and things as may be necessary to a full understanding of the case, and the court may, upon hearing, give judgment for such sum or sums of money as such officer or person is liable in law to pay. And if, in a suit upon the bond of any such officer or person, he or his sureties, or any of them, shall not for any reason be liable upon the bond, the court may, nevertheless, give judgment against such officer and such of his sureties as are liable, for the amount he or they may be liable to pay, without regard to the form of the actions or pleadings.

**SEC. 175. [When bond sued by city, etc.]**—Cities, towns, villages, or corporate authorities, or persons aggrieved, may prosecute suit against any treasurer or other officer collecting or receiving funds, for their use, but [by] suit upon the bond, in the name of the state of Nebraska, for their use, in any court of compe-

tent jurisdiction, whether the bond has been put in suit at the instance of the auditor or not. Cities, towns, villages, and other corporate authorities or persons, shall have the same rights in any suits or proceedings in their behalf as is provided in case of suits by or in behalf of the state.

**SEC. 176. [New assessments when records destroyed.]**—When assessment rolls or collectors' books, in whole or in part, of any county, town, city, village, or district, shall be lost or destroyed by any means whatever, a new assessment, or new books, as the case may require, shall be made under the direction of the county board. Said board shall, in such cases, fix reasonable times and dates for performing the work of assessment, equalization, levy, extension and collection of taxes, and paying over the same, or making new books, as the circumstances of the case may require. All the provisions of this chapter shall apply to the dates fixed by the county board, in the same manner that they apply to the dates for similar purposes, as fixed by this chapter. The county board is hereby fully empowered to select and appoint persons, where it may find the same necessary to carry into effect the provisions of this section.

**SEC. 177. [Duty of auditor when locality does not pay its share of tax.]**—Whenever it shall come to the knowledge of the auditor that any county, township, city, district, or town, or any well defined locality thereof, or any particular class of property therein, may hereafter be released, from any cause whatever, from its just proportion of state taxes, said auditor shall cause suit to be commenced in an action of debt, in the name of the state of Nebraska, either against the municipality or against the property unjustly released from taxation, or the owners thereof, for the amount of such tax, in the supreme court of this state, and when judgment may be recovered in any such case, the auditor shall levy a rate of tax on the equalized valuation of all property or particular class of property in such county, township, city, district, town, or locality, as the case may be, as will pay the state the amount of such judgment and costs; and it shall be the duty of the county clerk of the proper county to extend such rate of tax with the state tax of the year directed in the auditor's certificate. Any county clerk neglecting or refusing to extend such rate, as certified to him by the auditor, shall be removed from his office, and in addition thereto shall be subject to a fine of \$5,000, and damages caused by such neglect or refusal, to be sued for by the auditor, in an action of debt, in the name of the state of Nebraska, in the supreme court of this state; *Provided*, That in cases where the auditor and proper local authorities of the proper municipality can arrange to make such levy to reimburse the state in such cases, without suit, the auditor is hereby authorized to pursue such course.

**SEC. 178. [Auditor to furnish blanks.]**—It shall be the duty of the auditor to furnish suitable blanks for the assessment of property, for the settlements by county treasurers with said auditor, and all other books and blanks required by this act, which shall be paid by the state out of any funds appropriated for that purpose. Such books and blanks shall be uniform, and the auditor shall, from time to time, furnish county officers with necessary instructions to carry the provisions of this act into effect, and all such instructions shall be strictly complied with, by the officers in the performance of their respective duties. He shall give his opinion and advice on all questions of doubt as to the true intent and meaning of the provisions of this act.

**SEC. 179. [Foreclosure of tax lien.]**—The owner of any certificate or certificates of tax sale upon any tract of land or town lot shall be deemed to be the assignee and owner of all the liens for taxes of the state, county, city, village, township, district, and other municipal subdivisions for which such tract or lot was sold, and may, instead of demanding a deed therefor, as provided in this act, proceed by action at any time before the expiration of five years from the date of such certificate, to foreclose the same, and cause the tract or lot to be sold for the satisfaction thereof, and of all prior and subsequent taxes paid thereon, in all res-

pects as far as practicable, in the same manner and with like effect as though the same were a mortgage executed to the owner of such certificate or certificates for the amount named therein, together with such subsequent and prior taxes paid thereon by the person having or owning the title to said land or lot adverse thereto. More than one certificate on the same property may be included in the same action, but each together, with prior and subsequent taxes paid thereon, shall be deemed and stated as a separate cause of action; *Provided*, That no action to foreclose any such lien shall be maintained unless the owner of any such certificate shall have served notice on the owner or occupant of the land mentioned therein, within the time and in the same manner as provided in section 123.

**SEC. 130. [Neglect to demand deed.]**—If the owner of any such certificate shall fail or neglect either to demand a deed thereon, or to commence an action for the foreclosure of the same, as provided in the preceding sections, within five years from the date thereof, the same shall cease to be valid or of any force whatever, either as against the person holding or owning the title adverse thereto, and all other persons, and as against the state, county, and all other municipal subdivisions thereof.

**SEC. 181. [Decree—Interest.]**—In any case in which the plaintiff shall recover in an action for the foreclosure of tax liens, as provided in this act, he shall be entitled to interest on each amount paid by him, and evidenced by his certificates of tax sale and receipts for taxes paid, at the rate of twenty per cent. per annum from the date of each payment for the term of two years, and at the rate of ten per cent. per annum on each of said amounts from and after the expiration of said two years, and until the rendition of the decree of foreclosure, which decree shall draw interest as in other cases. At the time of the rendition of such decree, the court shall award to the plaintiff an attorney's fee equal to ten per cent. thereof, which shall be taxed as a part of the costs in the action.

**SEC. 182. [Definitions.]**—The words and phrases following, whenever used in this act, shall be construed to include in their meaning the definitions set opposite the same in this section, whenever it shall be necessary to the proper construction of this act:

1st. **Assessor—Assessors.**—Town, district, precinct and deputy assessors.

2d. **Auditor.**—Auditor of public accounts.

3d. **Bank—Banker—Broker—Stock Jobber.**—Whoever has money employed in the business of dealing in coin, notes, or bills of exchange, or in any business of dealing in or buying or selling any kind of bill of exchange, checks, drafts, bank notes, promissory notes, bonds, warrants, or other writing obligatory, or stocks of any kind or description whatsoever, or receiving money on deposit.

4th. **Collector—Collectors.**—County, town, district, and deputy collectors, including county, city, and township treasurers.

5th. **County board.**—The board of supervisors—the board of county commissioners.

6th. **Credits.**—Every claim or demand for money, labor, interest, or other valuable thing, due or to become due, not including money on deposit.

7th. **He.**—Male, female, company, corporation, firm, society, singular or plural number.

12th. **Real property—Real estate—Land—Tract—Lot.**—Not only the land itself, whether laid out in town or city lots, or otherwise, with all things contained therein, but also all buildings, structures, and improvements, and other permanent fixtures, of whatsoever kind, thereon, and all rights and privileges belonging or in anywise pertaining thereto, except where the same may be otherwise denominated by this act.

13th. **Shares of stock—Shares of capital stock.**—The shares into which the capital or stock of every incorporated company or association may be divided.

14th. **Tax—Taxes.**—Any tax, special assessments, or costs, interest or penalty imposed upon property.

**SEC. 183. [Acts repealed.]**—An act entitled "An act to provide a system of revenue," approved February 15, 1869, and all acts and parts of acts supplemental to and amendatory thereof, and all acts and parts of acts inconsistent with the provisions of this act, are hereby repealed; *Provided*, That such repeal shall not in any manner affect any rights heretofore acquired, or the collection of any taxes heretofore levied or assessed, or the validity of any sales for taxes heretofore made, or any right heretofore acquired under any law of this state.

**SEC. 184. [Provided for taking effect September 1, 1879.]**

**ARTICLE II.—MISTAKES IN ASSESSMENTS.**

**SECTION 1. [Power of commissioners and assessors.]**—If, on the assessment roll there be an error in the name of the person assessed, or any taxable property shall not be entered thereon, the name may be changed, and the property entered on the list by the assessor after the roll shall be returned to the county clerk; such error may be corrected, or the omission supplied, by the county commissioners. The county commissioners, upon being satisfied of such error, or omission, shall, at a regular meeting of the board, make an order requiring the person to be effected to show cause, at a day to be therein appointed, why the error should not be corrected, or omission supplied, and his name and the property be entered on the tax list; such order shall be served upon the party, or posted up on the property thirty days before the day appointed therein for showing cause; if no cause, or no sufficient cause be shown to the contrary, the commissioners shall assess such property, and order such error corrected, or omission supplied, and the name of the person, and description of the property entered on the tax list, and the tax shall be collected as in other cases; but proceedings to correct such error, or supply such omission, must be instituted within six months from the time the taxes would, if regularly assessed, have become delinquent. [G. S. 939.]

**ARTICLE III.—PURCHASE AT TAX SALE BY MUNICIPAL OFFICERS.**

**SECTION 1. [Purchase by county commissioners.]**—That at all tax sales provided for by law the county commissioners of the several counties of this state may purchase for the use and benefit, and in the name of their respective counties, any real estate therein advertised and offered for sale when the same remains unsold for want of other bidders. The respective county treasurers shall issue certificates of purchase of the real estate so sold in the name of the proper county. Such certificates shall remain in the custody of the county treasurer, and at any time the county commissioners may assign such certificates of purchase to any person wishing to buy for the amount expressed on the face of the certificate and interest thereon, at the rate per cent. which the taxes were drawing at the time of purchase, or for the total amount of all tax on such real estate. Such assignment may be made by the endorsement of the county clerk of his name on the back of each certificate, and such endorsement shall be made when requested by the county commissioners. [1879 § 1, 182.]

**SEC. 2. [Assignment of tax certificates.]**—Whenever the county commissioners of any county in this state have purchased any real estate in two successive years for delinquent taxes, or when there are three years or more of delinquent taxes due on any real estate, and the county commissioners have purchased the same for the delinquent taxes due thereon at a single sale, they may sell and assign the tax certificates issued upon such purchase for an amount not less than fifty per cent. of the amount expressed in such certificates; *Provided*, That if such real estate shall consist of lot or lots in any city, town or village in this state the taxes upon which have been delinquent for any three years and which so remain delinquent at the time of sale, the county commissioners may purchase such

**ART. II.** "An act to provide for correcting mistakes in the assessment and taxation of property. Took effect Feb. 27, 1873. G. S. 939. Not repealed, but see secs. 54, 70, 71, ante pp. 409, 411, 412. 7 Neb. 141.

**ART. III.** "An act to authorize certain county and municipal officers to purchase real estate at tax sale." Laws of 1879, 182. Took effect June 1, 1879. Superseding act of 1867, 12th Sess. Ter. 11. G. S. 934, and Laws 1875, 106.

lot or lots at any time for the amount of such delinquent taxes without the interest and may sell and assign the tax certificates therefor for an amount not less than fifty per cent. of the amount expressed in such certificate. [Amended and took effect Feb. 28, 1881.]

**SEC. 3. [Purchase of tax titles by municipalities.]**—That in case such real estate be within the corporate limits of any city or village, the city or village treasurer, or the collectors of taxes of such municipality, shall have the same power and is authorized to purchase any real estate in his city or village in like manner as the county commissioners may purchase as specified in section first of this act; and the said municipal treasurer may assign such certificates of sale (to be issued to him by the county treasurer on request) by the endorsement of his name on the back of each certificate, when ordered to do so by the city council or the trustees of his village, but no such certificate shall be issued to the city or village treasurer by the county treasurer when a certificate for the same tract or lot has been issued to the county commissioners.

**SEC. 4. [When county treasurer to account.]**—Whenever real estate is purchased by county commissioners, or by the city or village treasurer or collector, the county treasurer of the county wherein the real estate is situated shall not be obliged to account to the state treasurer, or to any person, for the amount of taxes due, until the county commissioners, or city or village authorities have sold the certificate or certificates of purchase of the real estate sold. And in all cases where such certificate or certificates of purchase of the real estate sold shall have been sold and assigned by the county commissioners for an amount not less than fifty per cent of the amount expressed in such certificates, and in all cases where real estate has been sold by the treasurer of a county at a minimum valuation, fixed thereon by the county commissioners in cases where the amount of taxes due exceeds the valuation of said real estate, and in all cases where the tax lien is foreclosed by the county commissioners, the county treasurer shall be required to account to the state treasurer, or any city treasurer or person, for the proportion only of the amount actually received due the state or otherwise, and the county treasurer shall receive credit for the full amount of the taxes charged up by the state, or city, or village against said county for said real estate. [Amended and took effect March 1, 1881.]

**SEC. 5. [Accountability of city to county treasurer.]**—Whenever there is more than one years tax due upon city or village real estate, the certificate of purchase may be assigned by the municipal treasurer at not less than fifty per cent. of the tax due, and when such certificate is assigned by the city or village treasurer, or collector, and not before, he shall pay to the county treasurer the due proportion of the state and county tax, and for the amount of the corporation tax, the city or village treasurer, or collector, may receive the indebtedness of such city or village.

#### ARTICLE IV.—FORECLOSURE OF TAX LIENS BY COUNTY COMMISSIONERS.

**SECTION 1. [Foreclosure of lien.]**—That in all cases whenever the county commissioners of any county in this state have purchased or shall hereafter purchase any real estate for taxes of any kind, delinquent for one year or more, and after the time of redemption from such sale has expired, they may in the name of their respective counties proceed by action at any time before the expiration of five years from the date of such sale, to foreclose such certificates or liens in the district court of such county and to cause the tract or lot to be sold for the satisfaction thereof, and of all prior and subsequent taxes due thereon, in all respects as far as practicable in the same manner and with like effect as though

**SEC. 5.** But see sec. 84 ante p. 122, where county treasurer collects city taxes in cities of the second class.

**ART. IV.** "An act to authorize county commissioners of any county to foreclose tax liens on real estate where the same have been purchased by them, and to authorize them to purchase such real estate at such foreclosure sales in the names of their respective counties, and authorize any assignee of such tax liens to foreclose the same." Approved and took effect Feb. 28, 1881.

the same were a mortgage, executed by the owner or owners of such real estate to the owner and holder of such certificate or liens for the amount therein expressed, together with such subsequent and prior taxes due thereon, and that at such foreclosure sales such county commissioners may if they deem best purchase in the name of their respective counties such real estate; *Provided*, That no action shall be brought and maintained by said commissioners unless the amount due on such certificates and for such taxes on said tract or tracts of land shall exceed the sum of two hundred dollars. [1881 § 1, chap. 75.]

SEC. 2. [**Foreclosure by assignee.**—That any assignee of such tax certificate or tax lien may foreclose the same in the same manner and with like effect as in cases where such county commissioners may under the provisions of this act proceed to foreclose the same, and any person whomsoever may purchase such real estate at such foreclosure sale; *Provided*, That the limit prescribed in the proviso to the first section shall not apply to the assignees of any such certificate.

SEC. 3. [**Notice to land owner.**—That no action to foreclose such liens shall be maintained unless the owner of the land mentioned in such certificate, if a resident of the state or the county, shall be served with personal notice that such action will be commenced, at least three months before the expiration of the time of redemption on such sale, and if a non-resident of the state, by publication for four consecutive weeks, the first time not more than five months and the last time not less than three months before the time of redemption shall expire, and such notice shall contain the same matter which is provided by law shall be embodied in the notice required by statute to be given to the owner or occupant of lands in cases when tax deeds shall be applied for by the purchaser or purchasers of such real estate at such tax sale.

SEC. 4. [**Appraisement—Sale.**—That such real estate when ordered by the court in such action of foreclosure to be sold, shall be appraised, advertised and sold, either by the sheriff or by special master commissioner appointed by the court, in the same manner as sales on foreclosure of mortgages are conducted, and that no such real estate shall be sold under such foreclosure for a less sum than two thirds of the appraised value thereof.

SEC. 5. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

#### ARTICLE V.—FORECLOSURE OF TAX LIENS BY OWNERS OF CERTIFICATES.

SECTION 1. [**Foreclosure of tax liens.**—That any person, persons, or corporation, having, by virtue of any provisions of the tax or revenue laws of this state, a lien upon any real property, for taxes assessed thereon, may enforce such lien by an action in the nature of a foreclosure of a mortgage, for the sale of so much real estate as may be necessary for that purpose, and costs of suit. [1875 § 1, 107.]

SEC. 2. [**When lien foreclosed.**—That any person, persons, or corporation, holding or possessing any certificate of purchase of any real estate, at public or private tax sale, or any tax deed, shall be deemed entitled to foreclose such lien under the provisions of this act, within any time not exceeding five years from the date of tax sale (not deed), upon which such lien is based; *And, provided*, That the taking out of a tax deed shall in no wise interfere with the rights granted in this chapter.

SEC. 3. [**Same—Where action brought.**—All petitions, for foreclosure or satisfaction of any such tax lien, shall be filed in the district court in chancery, where the lands are situated.

SEC. 4. [**Process—Service.**—Service of process in causes instituted under this chapter, shall be the same as provided by law in similar causes in the district courts, and where the owner of the land is not known, the action may be brought

ART. V. "An act to provide a method of foreclosing tax liens upon real estate in certain cases." Laws 1875, 107. Took effect Feb. 19, 1875. This act not repealed in direct terms, but see secs. 179-181, ante p. 432. See also 5 Neb. 365. 8 Id. 67.

against the land itself, but in such case the service must be as in the case of a non-resident; if the action is commenced against a person who disclaims the land, the land itself may be substituted by order of court for the defendant, and the action continued for publication.

**SEC. 5. [Sales, how made.]**—All sales of lands under this chapter, by decree of court, shall be made by a sheriff or other person authorized by the court, in the county where the premises or some part of them are situated.

**SEC. 6. [Deeds, how made.]**—Deeds shall thereupon be executed by such sheriff, which shall vest in the purchaser, the same title that was vested in the defendant to the suit, at the time of the assessment of the tax or taxes against the same; and such deed shall be an entire bar against the defendant to such suit, and against all parties or heirs claiming under such defendants; and in case the land itself is made defendant in the suit, the deed shall be an absolute bar against all persons, unless the court proceedings are void for want of jurisdiction; the object and intent of this section being to create a new and independent title, by virtue of the sale, entirely unconnected with all prior titles.

**SEC. 7. [Proceeds of sale—Application.]**—The proceeds of every sale made under a decree, by virtue of this chapter, shall be applied to the discharge of the debt, adjudged by the court to be due, and of the costs awarded, and if there be any surplus it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

**SEC. 8. [Same—Investment.]**—If such surplus, or any part thereof, shall remain in court, for the period of three months, without being applied for, the court may direct the same to be put out at interest, under the direction of the court, for the benefit of the defendant, his representatives, or assigns, to be paid to them by the order of the court; the party to whom said surplus shall be loaned to be designated by the court, and the sureties, upon which said money is loaned, to be approved by the judge.

**SEC. 9. [Same—Lands, how sold.]**—All lands sold by the sheriff by virtue of this act, shall be appraised, advertised, and sold as upon execution, and the title conferred by his deed shall be entitled to all the presumptions of any judicial sale.

**SEC. 10. [Act cumulative.]**—This act shall be construed as cumulative and not exclusive, in respect to the remedy for enforcing liens, and collecting delinquent taxes, by sale of property or otherwise, in the cases herein provided for, and shall in no wise interfere with, alter, or amend the existing revenue laws of the state.

#### ARTICLE VI.—PAYMENT OF JUDGMENTS AGAINST MUNICIPALITIES.

**SECTION 1. [Duty of officers.]**—That whenever any judgment shall be obtained in any court of competent jurisdiction in this territory for the payment of a sum of money against any county, township, school district, road district, town or city board of education, or against any municipal corporation, or when any such judgment has been recovered and now remains unpaid, it shall be the duty of the county commissioners, school district board of education, city council, or other corporate officers, as the case may require, to make provisions for the prompt payment of the same. [12th Sess 1867 § 1, 13.]

**SEC. 2. [Same—Payment—Tax.]**—If the amount of revenue derived from taxes levied and collected for ordinary purposes shall be insufficient to meet and pay the current expenses for the year in which the levy is made, and also to pay the judgment remaining unpaid, it shall be the duty of the proper officers of the corporation, against which any such judgments shall have been obtained and remaining unsatisfied, to at once proceed and levy and collect a sufficient amount of money to pay off and discharge such judgments.

**SEC. 3. [Levy of tax.]**—The tax shall be levied upon all the taxable prop-

ART. VI. "An act to provide for the payment of judgments recovered against municipal corporations." Laws 12th Sess. Ter. 1867, 13. G. S. 935. Took effect Feb. 18, 1867.

erty in the district, county, township, town or city, bound by the judgment, and shall be collected in the same manner and at the same time provided by law for the collection of other taxes.

SEC. 4. [Same.]—The corporate officers whose duty it is to levy and collect taxes for the payment of the current expenses of any such corporation, against which a judgment may be so obtained, shall also be required to levy and collect the special tax herein provided for, for the payment of judgments.

SEC. 5. [Action against officers—Mandamus.]—If any such corporate authorities, whose duty it is, under the provisions of this act, to so levy and collect the tax necessary to pay off any such judgment, shall fail, refuse, or neglect to make provisions for the immediate payment of such judgments, after request made by the owner, or any person having an interest therein, such officers shall become personally liable to pay such judgments, and the party or parties in[terested] may have an action against such defaulting officers to recover the money due on the judgment, or he or they having such interest may apply to the district court of the county in which the judgment is obtained, or to the judge thereof in vacation, for a writ of mandamus to compel the proper officers to proceed to collect the necessary amount of money to pay off such indebtedness, as provided in this act; and when a proper showing is made by the applicant for said writ, it shall be the duty of the court or judge, as the case may be, to grant and issue the writ to the delinquents, and the proceedings to be had in the premises, shall conform to the rules and practice of said court, and the laws of this territory, in such cases made and provided.

#### ARTICLE VII.—MISCELLANEOUS PROVISIONS.

SECTION 1. [Revenue arising from internal improvements—How set apart.]—That if any township, precinct, incorporated city, or village in this state shall issue any bonds to aid in the construction or completion of any works of internal improvement, the revenues arising from the taxation of such internal improvements shall be set apart forever to pay the interest and principal upon said bonds until the same shall be fully paid; and in the event that such revenues shall not be sufficient to pay such bonds at their maturity such revenues shall still be set apart and shall be credited to the general fund required from such township, precinct, incorporated city, or village, before such tax list is extended, until the same shall be fully reimbursed. [1875 § 1, 110.]

SEC. 2. [Assessment of certain property for taxation.]—That at the time the county commissioners furnish the assessor with blank forms and notices necessary for the proper assessment of the property in the several precincts, they shall also furnish the assessor of each township, precinct, incorporated city, or village with a list of all the property in such township, precinct, incorporated city, or village for which such bonds have been issued; and the assessor shall assess such property separately, and enter the same in a separate book, provided for that purpose; *Provided, however,* That railroads shall be assessed as now provided in section seventeen of chapter sixty-six of the general statutes, entitled "Revenue." [Id. § 2.]

SEC. 3. [Revenues to be kept in a separate fund.]—The treasurer having control of such revenues shall keep the same in a separate fund for the purpose aforesaid. [Id. § 3.]

SEC. 4. [Sale of lands of less value than the taxes due.]—Whenever it shall appear to the county commissioners of any county, that any tract of land, or town or city lot in such county is of less value than the amount of taxes due upon it, it shall be their duty, at any meeting after said land or lot shall have been offered for sale and not sold for want of bidders, to fix a minimum price for the

SECS. 1-3. "An act setting aside the revenue arising from the taxation of works of internal improvement to pay the bonds issued to construct or complete the same." Laws 1875, 110. Took effect February 20, 1875. Assessment of railroad property, see ante p. 407.

SECS. 4-5. "An act concerning the sale of lands for the non-payment of taxes." Laws 1875, 93. Took effect Feb. 25, 1875.



same, and certify the price so fixed to the county treasurer, and such land or lot shall be sold by said treasurer as other lands and lots are sold at "private sale," at not less than said minimum price, irrespective of the amount of taxes due upon it; and such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes or penalty which may remain after applying the amount for which it was held thereon. [1875 § 1, 93.]

**SEC. 5. [Redemption.]**—All lands and lots so sold shall be subject to redemption, and the purchaser thereof shall acquire title thereto in the same manner as other lands sold at tax sale in this state. [Id. § 2.]

**SEC. 6. [Taxes deposited in suits brought to restrain collection.]**—That in all suits heretofore or hereafter to be brought in any court to enjoin the collection of taxes in which the plaintiff may have deposited in court the amount of the tax or a part thereof in controversy to abide the final determination of the suit, and such final determination shall be in favor of the collection of the tax or a part thereof, the treasurer's defendant shall receive and receipt for such moneys; *Provided*, There shall first be paid to the attorney or attorneys for the defendant or defendants their costs, disbursements, and fees incurred in the defense of the suit and in case of a controversy in regard to such fee, then the amount claimed by such attorney or attorneys shall be retained by said clerk until the court shall have determined the amount, which such amount shall be paid over to such attorney or attorneys. [1875 § 1, 103.]

**SEC. 7. [Lien of taxes on railroad property.]**—That taxes upon any and all railroads in this state, including road bed, right of way, depots, side tracks, ties and rails, now constructed or hereafter to be constructed, are hereby made a perpetual lien thereupon, commencing from the first day of March in each current year, against all claims or demands whatsoever of all persons or bodies corporate, except the United States and this state, and the above described property, or any part thereof, may be taken and held for the payment of all the taxes assessed against said railroad company in the several counties in this state. [1877 § 1, 280.]

**SEC. 8. [Personal property.]**—The property mentioned in the preceding section is hereby declared to be personal for the purpose of taxation and collection of the same. [Id. § 2.]

## CHAPTER 78.—ROADS.\*

**SECTION 1. [Supervision by county board.]**—The county board has a general supervision over the public roads of the county, with power to establish and maintain them as herein provided, and to see that the laws in relation to them are carried into effect. [1879, 120.]

**SEC. 2. [Width.]**—All public roads shall have a width of sixty-six feet, and the staked line marking such road shall be on the northern edge of the said sixty-six feet, if the road is running east and west, and on the western edge, if the course of the road is north and south; *Provided*, That roads located on the state line, where any adjoining state locates similar roads, may have a width of thirty-three feet; *And provided further*, That whenever the county board shall deem it necessary, the width of such road, at any point where a bridge is to be located and constructed, may be one hundred and fifty feet for a distance not exceeding three hundred feet on either side, from the center of such bridge.

**SEC. 3. [Public roads defined.]**—All roads within this state, which have

SEC. 6. "An act providing for the distribution of moneys deposited in suits brought to enjoin the collection of taxes." Laws 1875, 103. Took effect Feb. 19, 1875.

SECS. 7-8. "An act to make taxes a perpetual lien upon certain personal property from March first in each current year, and declaring the same personal for the purposes of taxation." Laws 1877, 230. Took effect Feb. 13, 1877.

\*NOTE.—"An act to amend chapter forty-seven of the Revised Statutes entitled "Roads." Laws 1879, 120. Took effect June 1, 1879.

NOTE, also, that "An act to provide for the election of road supervisors and further define their duties," Laws 1867, 45, G. S. 958; "An act declaring section lines roads in certain counties," G. S. 959; "An act prescribing additional duties of supervisors," Laws 1875, 113; "An act to vacate certain roads," Laws 1875, 114, being superseded and re-enacted by different provisions of this chapter, are omitted.

erty in the district, county, township, town or city, bound by the judgment, and shall be collected in the same manner and at the same time provided by law for the collection of other taxes.

SEC. 4. [Same.]—The corporate officers whose duty it is to levy and collect taxes for the payment of the current expenses of any such corporation, against which a judgment may be so obtained, shall also be required to levy and collect the special tax herein provided for, for the payment of judgments.

SEC. 5. [Action against officers—Mandamus.]—If any such corporate authorities, whose duty it is, under the provisions of this act, to so levy and collect the tax necessary to pay off any such judgment, shall fail, refuse, or neglect to make provisions for the immediate payment of such judgments, after request made by the owner, or any person having an interest therein, such officers shall become personally liable to pay such judgments, and the party or parties in[terested] may have an action against such defaulting officers to recover the money due on the judgment, or he or they having such interest may apply to the district court of the county in which the judgment is obtained, or to the judge thereof in vacation, for a writ of mandamus to compel the proper officers to proceed to collect the necessary amount of money to pay off such indebtedness, as provided in this act; and when a proper showing is made by the applicant for said writ, it shall be the duty of the court or judge, as the case may be, to grant and issue the writ to the delinquents, and the proceedings to be had in the premises, shall conform to the rules and practice of said court, and the laws of this territory, in such cases made and provided.

#### ARTICLE VII.—MISCELLANEOUS PROVISIONS.

SECTION 1. [Revenue arising from internal improvements—How set apart.]—That if any township, precinct, incorporated city, or village in this state shall issue any bonds to aid in the construction or completion of any work of internal improvement, the revenues arising from the taxation of such internal improvements shall be set apart forever to pay the interest and principal on said bonds until the same shall be fully paid; and in the event that such revenues shall not be sufficient to pay such bonds at their maturity such revenues shall still be set apart and shall be credited to the general fund required for township, precinct, incorporated city, or village, before such tax list is levied until the same shall be fully reimbursed. [1875 § 1, 110.]

SEC. 2. [Assessment of certain property for taxation.]—At the time the county commissioners furnish the assessor with the notices necessary for the proper assessment of the property in townships, precincts, they shall also furnish the assessor of each township, precinct, incorporated city, or village with a list of all the property in such township, precinct, incorporated city, or village for which such bonds have been issued. The assessor shall assess such property separately, and enter the same in the book, provided for that purpose; *Provided, however,* That property shall be assessed as now provided in section seventeen of chapter 17 of the statutes, entitled "Revenue." [Id. § 2.]

SEC. 3. [Revenues to be kept in a separate fund.]—The county commissioners having control of such revenues shall keep the same in a separate fund for the purpose aforesaid. [Id. § 3.]

SEC. 4. [Sale of lands of less value than bonds.]—If it shall appear to the county commissioners that the value of any land, or town or city lot in such county is less than the amount of the bonds due upon it, it shall be their duty, at any time after the same have been offered for sale and not sold for want of buyers, to sell the same for the purpose of paying the same.

SECS. 1-3. "An act setting aside the revenues to pay the bonds issued to construct the railroad in 1875. Assessment of railroad property."

SECS. 4-5. "An act concerning the assessment of property." effect Feb. 25, 1875



been laid out in pursuance of any law of this state, or of the territory of Nebraska, and which have not been vacated in pursuance of law, are hereby declared to be public roads; *Provided*, That all roads that have not been used within five years shall be deemed vacated.

SEC. 4. [**Establishment—Petition.**—Any person desiring the establishment, vacation, or alteration of a public road, shall file in the clerk's office of the proper county, a petition signed by at least ten electors residing within five miles of the road proposed to be established or vacated, in substance as follows:

To the board of \_\_\_\_\_ county. The undersigned ask that a public road, commencing at \_\_\_\_\_, and running thence \_\_\_\_\_ and terminating at \_\_\_\_\_ be established, vacated, or altered (as the case may be).

SEC. 5. [**Deposit for expenses.**—The petitioners for establishment or alteration of any public road shall at the time of filing their petition therefor, deposit with the county clerk a sufficient sum of money to pay for the laying out or alteration of such road, the expense thereof to be paid out of such deposit, unless the road is finally established or altered. If the road is finally established or altered, the money shall be returned to the persons who deposited the same.

SEC. 6. [**Commissioner—Appointment.**—Upon compliance with the foregoing requisites, the county clerk shall appoint some suitable and disinterested elector of the county a commissioner to examine into the expediency of the proposed road, alteration, or vacation thereof, and report accordingly.

SEC. 7. [**Same—Power.**—The commissioner is not confined to the precise matter of the petition, but may inquire and determine whether that or any road in the vicinity, answering the same purpose and in substance the same, be required; but such road must not be established through any burying ground which is exempt from execution; nor through any garden, orchard or ornamental ground contiguous to any dwelling house, so as to cause the removal of any building without the consent of the owner.

SEC. 8. [**Same.**—In forming his judgment, he must take into consideration both the public and private convenience, and also the expense of the proposed road.

SEC. 9. [**Same—Report.**—After a general examination, if he shall not be in favor of establishing the proposed road, he will so report, and no further proceedings shall be had on that petition.

SEC. 10. [**Same.**—If he deems such establishment expedient, he may proceed at once to lay out the road as hereinafter directed, and may report accordingly, if the circumstances of the case are such as to enable him to do so, without pursuing the course pointed out in the next section.

SEC. 11. [**Survey.**—If the precise location of the road cannot be otherwise given, he must cause the line of the road to be accurately surveyed and plainly marked out.

SEC. 12. [**Commissioner's oath.**—Any commissioner, other than the county surveyor, must be sworn to faithfully and impartially discharge his duty as such commissioner, and, after being thus qualified, he shall have power to swear the assistants employed to a faithful and impartial performance of their respective duties in laying out the road described in his commission.

SEC. 13. [**Bearing stakes.**—Stakes must be set at each change of direction, on which shall be marked the bearing of the new course. Stakes must also be set at the crossing of fences and streams, and at intervals in the prairie, not exceeding a quarter of a mile each; in the timber, the course must be indicated by trees suitably blazed.

SEC. 14. [**Trees—Monuments.**—Bearing trees must, when convenient, be established at each angle, and the position of the road relative to the corners of sections, and junctions of streams, or any other natural or artificial monument, or conspicuous object, must, as far as convenient, be stated in the field notes, and shown on the plat.

SEC. 15. [**Plat and report—Files.**—A correct plat of the road, together with a copy of the field notes of the surveyor, if one has been employed, must

be filed as a part of the commissioner's report, and he shall also state the probable cost of the work in laying out or altering such road, including any necessary bridges, culverts and ditches. Such report shall be filed with the county clerk.

**SEC. 16. [Objections and claims for damages to be filed.]**—If the report of the commissioner be in favor of establishing or altering the road, the county clerk must appoint a day, not less than sixty, nor more than ninety days, on or before which day all objections to the establishment or alteration to the road, and claims for damages by reason thereof, must be filed with the clerk.

**SEC. 17. [Examination—Report.]**—The time for the commissioner to commence the examination shall be fixed by the clerk, and if he fails to so commence, or report, the clerk may fix another day, or extend the time for making such report, or may appoint another commissioner.

**SEC. 18. [Notice to land owners.]**—Notice shall be published for four weeks in some newspaper published in the county, if any such there be, or if there be no newspaper published in the county then such notice shall be posted in at least three public places along the line of said proposed road, which notice may be in the following form:

To all whom it may concern: The commissioner appointed to locate, vacate, or alter (as the case may be) a road commencing at \_\_\_\_\_ in \_\_\_\_\_ county, running thence (describe in general terms all the points as in the commissioner's report), and terminating at \_\_\_\_\_ has reported in favor of the establishment (vacation or alteration) thereof, and all objections thereto, or claims for damages, must be filed in the county clerk's office on or before noon of the \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_ or such road will be established (vacated or altered) without reference thereto.

A. B., County Clerk.

The publication or posting of such notice shall be a sufficient notice to all persons owning land over which any road is proposed to be located.

**SEC. 19. [Report by county clerk.]**—No objections or claims for damages shall be filed or made after noon of the day fixed for filing the same, and if no objections or claims for damages are filed on or before noon of the day fixed for filing the same, and the county clerk is satisfied the provisions of the preceding section have been complied with, he shall report to the county board at their next session all the proceedings hereinbefore provided for.

**SEC. 20. [Hearing of application.]**—If objections to the establishment of the road or claims for damages are filed, the further hearing of the application shall stand continued to the next session of the county board, held after the commissioners appointed to assess damages have reported.

**SEC. 21. [Appraisers of damages.]**—When claims for damages are filed and on the day appointed for filing the same, the county clerk must appoint three suitable and disinterested electors of the county as appraisers, to view the ground, on a day fixed by him, and report upon the amount of damages sustained by the claimants; such report shall be made and filed in the clerk's office within thirty days after the day they are appointed.

**SEC. 22. [Claims, etc., to be in writing.]**—All claims for damages and objections to the establishment, vacation, or alteration of the road must be in writing, and the statements in the application for damages shall be considered denied in all the subsequent proceedings.

**SEC. 23. [Notice to appraisers.]**—The clerk shall cause notice of their appointment to be given to each of the appraisers, fixing the hour at which they are to meet at the office of the clerk, or of some justice of the peace therein named.

**SEC. 24. [Appraisers—Vacancies.]**—If the appraisers are not all present within one hour of the time fixed, the clerk or justice, as the case may be, shall fill the vacancy by the appointment of others. The appraisers must be sworn to discharge their duty faithfully and impartially. Should the report not be filed in time, or should any other good cause for delay exist, the clerk may postpone the

SEC. 19. Under the former law requiring notice in advance of petition. [G. S. 958.] it was held that unless the notice had been given, the commissioners had no jurisdiction in the location of the road. 5 Neb. 254. 6 Neb. 133. 7 Neb. 31. 9 Neb. 331. Proof of posting notices should be made. 6 Neb. 133.

time for final action on the subject, and may, if expedient, appoint other commissioners.

SEC. 25. [**Costs.**—Should no damages be awarded the applicant therefor, the whole of the costs growing out of his application shall be paid by him.

SEC. 26. [**Action of county board.**—At the next meeting of the county board, after the proceedings hereinbefore contemplated have been had, the said board may hear testimony, consider petitions for and remonstrances against the establishment, vacation, or alteration, as the case may be, if such remonstrance be filed within the time provided in section 19, and may establish, vacate, or alter, or refuse to do so, as in their judgment, founded on the testimony, the public good may require. Said board may increase or diminish the damages allowed by the appraisers, and may make such establishment, vacation, or alteration, conditioned upon the payment in whole or in part of the damages awarded, or expenses in relation thereto.

SEC. 27. [**Same.**—In the latter case, a day shall be fixed for the performance of the condition, which must be before the next session of the board, and if the same is not performed by the day thus fixed, the board shall, at such session, make some final and unconditional order in the premises.

SEC. 28. [**Action to be recorded.**—Any order made or action taken in the establishment of a road, shall be entered in the road record, distinguishing between those made or taken by the clerk and those by the county board.

SEC. 29. [**Record of plat and field notes.**—After the road has been finally established, the plat and field notes must be recorded by the county clerk, and the road overseers of the district through which such road passes shall be directed by the clerk to have the same opened and worked; but when crops have been planted or sowed before the road is finally established, the opening thereof shall be delayed until the crop is harvested.

SEC. 30. [**Vacation of old road.**—The establishment of a new road on the route of a road already established according to law, shall not vacate the road previously established, unless such vacation is prayed for in the petition, and so declared in the order establishing a new road.

SEC. 31. [**Removal of fence.**—Whenever a public road is ordered to be established or altered, according to the provisions of this chapter, which road shall pass through or on inclosed land not planted or sowed with crops, the road overseer shall give the owner or occupant of such land sixty days notice in writing to remove his fences. If such owner or occupant does not remove his fence within sixty days after such notice, the overseer shall cause the same to be removed, and the road opened and worked; and such owner shall forfeit the sum of one dollar for every day he shall permit his fence to remain after the expiration of said sixty days, and shall pay all necessary cost of removal, to be collected by said overseer before any justice of the peace having jurisdiction, for the use and benefit of the school fund.

SEC. 32. [**Streets in villages.**—All public streets of villages not incorporated are a part of the public road; and all road overseers or persons having charge of the same, in the respective districts of such villages, shall work the same as provided by law.

SEC. 33. [**Cities or incorporated village.**—Such portions of all roads as lie within the limits of any city or incorporated village, shall conform to the direction and grade, and be subject to all regulations of other streets in such city or village.

SEC. 34. [**Lands of state institutions.**—Roads or streets shall not be established or opened across the lands reserved by the state for its various institutions lying adjacent thereto without the express consent of the legislature.

#### IN TWO OR MORE COUNTIES.

SEC. 35. [**Roads along or across county line.**—The establishment, vacation, or alteration of a public road, either along or across a county line may

SEC. 28. The measure of damages is the fair market value of the land actually taken, while special benefits may be set off against incidental damages to the residue of the tract. 3 Neb. 242.

be effected by the concurrent action of the respective county boards in the mode hereinbefore prescribed. The commissioners appointed to locate the road in such cases must act in concert, and the road will not be deemed established, vacated, or altered in either county until it is so in both. All expenses incurred under the provisions of the preceding section, and all expenses in keeping public roads on county lines in repair, shall be paid equally by the counties interested.

**SEC. 36. [Distinctions abolished—Concurrent action required.]**—Hereafter there shall be no distinction between roads heretofore known as state roads and county roads; both are alike subject to the provision of this chapter. Roads established by the concurrent action of the county boards of two or more counties can only be discontinued by the concurrent action of the county boards of the several counties in which the same may be situated, but such roads shall be treated in all other respects as provided in this chapter.

#### CONSENT ROADS.

**SEC. 37. [How established.]**—Public roads may be established without the appointment of a commissioner, provided the written consent of all the owners of the land to be used for that purpose be first filed in the county clerk's office; and if it is shown to the satisfaction of the county board that the proposed road is of sufficient public importance to be opened and worked by the public, they shall make an order establishing the same, from which time only shall it be regarded as a public road.

**SEC. 38. [Same—Survey necessary.]**—If a survey for the establishment of the road named in the preceding section is necessary, the board before ordering such survey, may require the parties asking for the establishment of such highway to pay, or secure the payment, of the expenses of such survey.

#### [DAMAGES—APPEALS.]

**SEC. 39. [Damages—Appeals.]**—Any applicant for damages claimed to be caused by the establishment of a road, may appeal from the final decision of the county board, to the district court of the county in which the land lies; but notice of such appeal must be served on the county clerk within twenty days after the decision is made. If the road has been established, on condition that the petitioners therefor pay the damages, such notice shall be served on the four persons first named in the petition for the highway, if there are that many who reside in the county.

**SEC. 40. [Same.]**—An appeal may also be taken by the petitioner for the road as to the amount of damages, if the establishment of the road has been made conditional upon his paying the damages, by his serving notice of such appeal on the county clerk and applicant for damages within twenty days after the decision of the board, and filing a bond in the office of such clerk, with sureties to be approved by him, conditioned for the payment of all costs occasioned by such appeal, unless the appellant fails to recover a more favorable judgment in the district court than was allowed him by such board.

**SEC. 41. [Transcript on appeal.]**—In the cases contemplated in the two preceding sections, the clerk shall, within ten days after the notices aforesaid are served and filed in his office, make out and file in the office of the clerk of said court a transcript of the papers on file in his office, and the proceedings of the board in relation to such damages. The claimant for damages shall be plaintiff, and the petitioner for the road defendant, except the damages have been ordered paid out of the county treasury, in which case the county shall be defendant.

**SEC. 42. [Proceedings on appeal.]**—The amount of damages the claimant is entitled to shall be ascertained by said court in the same manner as in actions by ordinary proceedings, and the amount so ascertained shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of the county board, who shall thereafter proceed as if such amount had been by them allowed the claimant as damages.

**SEC. 43. [Costs.]**—If the appeal has been taken by the claimant, the petitioner of the road or the county must pay the costs occasioned by the appeal; but the county shall pay only when the damages have been ordered to be paid out of the county treasury. If the petitioner for the road appeals, he must pay the costs, unless the claimant recovers a less amount than was allowed him by the board, in which case the costs shall be paid by the claimant. Judgment shall be rendered in accordance with the foregoing provisions.

[ROAD PLATS.]

**SEC. 44. [Re-survey.]**—When by the reason of the loss or destruction of the field notes of the original survey, or in cases of defective surveys or record, or in cases of such numerous alterations of any road since the original survey, that its location cannot be accurately defined by the papers on file in the proper office, the county board of the proper county may, if they deem it necessary, cause such road to be re-surveyed, platted and recorded as hereinbefore provided.

**SEC. 45. [Road plat-book.]**—If the same has not been heretofore done in any other manner, the county clerk shall, within six months after this act shall take effect, cause every road in his county, the legal existence of which is shown by the records and files in his office, to be platted in a book to be obtained and kept for that purpose, and known as the "road plat-book." Each township or precinct shall be platted separately, on a scale of not less than four inches to the mile; and such clerk shall have all changes in or additions to the roads legally established immediately entered upon said plat-book, with appropriate references to the files in which the papers relating to the same may be found.

**SEC. 46. [Section lines declared public roads.]**—The section lines are hereby declared to be public roads in each county in this state, and the county board of such county may, whenever the public good requires it, open such roads without any preliminary survey, and cause them to be worked in the same manner as other public roads; *Provided*, That any damages claimed by reason of the opening of any such road shall be appraised and allowed, as nearly as practicable, in manner hereinbefore provided.

[PRIVATE ROADS.]

**SEC. 47. [Right of way, how opened.]**—When the lands of any person shall be surrounded or enclosed, or be shut out and cut off from a public highway by the lands of any other person or persons, who refuse to allow such person a private road to pass to or from his or her said land, it shall be the duty of the county board on petition of any person whose land is so surrounded or shut out, to appoint three disinterested freeholders of the precinct, or township, in counties under township organization, in which the land lies, as commissioners to view and mark out a road from land of the petitioner to the nearest public highway, and assess the damages the person will sustain through whose land the road will pass.

**SEC. 48. [Notice to land owners.]**—The person desiring to secure the right of way shall give the person or persons through whose lands the road will run, at least two days notice of such intended application, by leaving or causing to be left, a written notice, at his usual place of abode; and satisfactory evidence that such notice has been given shall be presented to the board before commissioners shall be appointed.

**SEC. 49. [Commissioners—Oath.]**—The commissioners shall, before entering upon the discharge of their duties, take and subscribe an oath before some judge or justice of the peace, that they are not interested nor of kin to either of the parties interested in the proposed road, and that they will faithfully and impartially view and mark out said road to the greatest ease and convenience of the parties, and as little as may be to the injury of either, and assess the damages which will be sustained by the party through whose lands it will run.

**SEC. 50. [Report of proceedings.]**—Said commissioners shall make out



a report of their proceedings, stating particularly the course and distance of said road, and the amount of damages assessed, which report, together with a certificate of the oath, shall be returned to the county commissioners, and filed by the county clerk.

**SEC. 51. [Same—When opened—Appeal.]**—If the report be approved by the county board, and the petitioner shall produce satisfactory evidence that he has paid the damages assessed (or tendered payment, if the party refuse to receive it), and all costs attending the proceedings, the county board shall grant an order to said petitioner to open a road not exceeding fifteen feet in width; and if any person or persons obstruct said road, such person or persons shall be liable to all the penalties for obstructing a public road; *Provided, however,* If such road shall pass through any inclosure, and it shall be required by the owner thereof, the person applying for such road shall put up and keep at each entrance into such inclosure a good and substantial swinging gate; *Provided, further,* That either party may appeal from the decision of the county board in like manner as prescribed in case of public roads.

**SEC. 52. [Right of way, an easement.]**—Upon the establishment of the right of way, as in this chapter provided, the same shall vest and descend as an easement in the party and his or her heirs or assigns forever.

[GENERAL PROVISIONS.]

**SEC. 53. [Road districts.]**—The county board shall divide the county, except that portion occupied by cities and incorporated villages, into as many road districts as may be necessary, and may alter the boundaries thereof as may seem proper; *Provided, however,* That in no case shall any road district be so constituted as to be within the limits of two distinct voting precincts, or townships in counties under township organization; and it shall be the duty of the county clerk, upon application, to furnish each supervisor with a particular description of the boundaries of his district.

**SEC. 54. [Overseers to procure tools.]**—The overseers of the respective districts are hereby authorized to procure, if they deem it necessary, a plow and one or more scrapers, for the use of the road district, the cost thereof to be paid out of the road fund of the district, and allowed in the settlement with the overseer.

**SEC. 55. [Neglect of overseers—Penalty.]**—If any overseer shall neglect or refuse to keep the roads of his district in good repair as the number of hands and the amount of road tax under his control would reasonably enable him to do, or otherwise neglect to perform any of the duties imposed upon him by this chapter, he shall be liable, on his official bond, to pay a fine of not less than five nor more than fifty dollars, to be recovered by civil action before any justice of the peace in the county at the suit of any citizen for the benefit of the school fund.

**SEC. 56. [Sudden damages.]**—In case of any sudden damage or injury to any bridge, culvert, or road, the overseer may, on one days notice, call out any and all able-bodied men under fifty years of age in his district (but not more than two days at any one time without their consent), to effect all repairs immediately necessary thereon; and persons so called out shall be entitled to receive \$1.50 per day from the fund in the hands of such overseer.

**SEC. 57. [Failure to labor—Penalty.]**—If any able-bodied man, when duly summoned as provided in the preceding section, fail to appear and labor diligently, by himself or his substitute, or send satisfactory excuse thereof, he shall be liable to a penalty of five dollars, to be recovered by civil action before any justice of the peace, at the suit of any citizen for the benefit of the school fund.

**SEC. 58. [Roads and bridges in cities.]**—The county board may, in their discretion, whenever there is sufficient money on hand in the county road fund, build or repair any bridge or bridges within the limits of any incorporated city or village in their county.

**SEC. 55.** No right of action against the overseer exists for injuries occasioned to a person or his property by reason of a defect in a public road or bridge. 5 Neb. 392. Nor is county liable. 10 Neb. 554.

**SEC. 59. [Roads on county and town lines.]**—Any public road that is or shall hereafter be laid out on a county or town line, shall be held to be a road on a county or township line, although, owing to the topography of the ground along said county or township line, or at the crossing of any stream of water, the proper authorities, in establishing or locating such road, may have located a portion of the same to one side of such county or township line.

**SEC. 60. [Persons meeting on road.]**—Whenever any persons, traveling with any carriages, shall meet on any road in this state, the persons so meeting shall seasonably turn their carriages to the right of the center of the road, so as to permit each carriage to pass without interfering or interrupting, under the penalty of five dollars for every neglect or offense; *Provided*, This section shall not be construed to apply to any case, unless some injury to person or property shall occur by the driver of the carriage or wagon refusing to turn to the right of the beaten track; nor shall it be construed to extend to a case where it is impracticable, from the nature of the ground, for the driver of the carriage or wagon to turn to the right of the beaten track.

**SEC. 61. [Drunken drivers.]**—No person owning any carriage, running or traveling upon any road in this state, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such carriage who is addicted to drunkenness or the excessive use of spirituous liquors, and if any such owner shall violate the provisions of this section, after he shall have had notice and reasonable proof that such driver is addicted to drunkenness, he shall forfeit at the rate of five dollars per day for all the time during which he shall thereafter have kept any such driver in his employment.

**SEC. 62. [Same—Discharge.]**—If any driver, whilst actually employed in driving any such carriage, shall be guilty of intoxication to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith to discharge such driver from his employment; and every such owner who shall retain or have in his employ, within three months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for the time during which he shall keep any such driver in his employment after receiving such notice.

**SEC. 63. [Running horses—Penalty.]**—No person driving any carriage upon any road within this state, with or without passengers therein, shall run his horses or carriage (or permit the same to run) upon any occasion, or for any purpose whatever; and no person riding any horse or mule shall run the same on any public road, except in cases of necessity; and every person who shall offend against the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding ten dollars, or imprisoned not exceeding sixty days, at the discretion of the court.

**SEC. 64. [Horses to be hitched.]**—It shall not be lawful for any person to leave a horse, mule, or team standing upon any public road, unless the same shall be securely hitched or guarded. Any person offending against the provisions of this section shall be liable to a penalty of \$5.00 for each and every such offense.

**SEC. 65. [Same.]**—It shall not be lawful for the driver of any carriage used for the purpose of conveying passengers for hire to leave the horses attached thereto while passengers remain therein, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running. And if any such driver shall offend against the provisions of this section, he shall forfeit the sum of \$20, to be recovered by civil action at the suit of any citizen for the benefit of the school fund.

**SEC. 66. [Owners liable for damages—Violation of act—Penalty.]**—The owners of every carriage running upon any road, for the conveyance of passengers, shall be liable, jointly and severally, to the party injured, in all

cases, for all injuries and damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person or to the property of any person; and that, whenever the act occasioning such injury or damage be wilful, negligent, or otherwise, in the same manner that such driver would be liable. Any driver of any mail stage coach, or any other vehicle for the conveyance of passengers, wilfully offending against the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned not exceeding thirty days, or fined not exceeding \$100.

SEC. 67. [**Carriage defined.**—The term "carriage," as used in this act, shall be construed to include stage coaches, wagons, carts, sleighs, sleds and every other carriage or vehicle used for the transportation of passengers and goods, or either of them.

SEC. 68. [**Additional regulations in cities and villages.**—Nothing herein contained shall be construed to prevent additional regulations, or the licensing of hacks and carriages by the corporate authorities of cities and villages, under the ordinances of such corporation.

SEC. 69. [**Injuring or obstructing roads.**—If any person shall injure or obstruct a public road by falling a tree or trees in, upon or across the same, or by placing or leaving any other obstruction thereon, or by encroaching upon the same with any fence, or by plowing or digging any ditch or other opening thereon, or by turning a current of water so as to saturate or wash the same, or shall leave the cutting of any hedge thereupon, for more than five days, he shall forfeit for every such offense a sum not less than \$8 nor more than \$10, and in case of placing any obstruction on the road, an additional sum of not exceeding \$3 per day for every day he shall suffer such obstruction to remain after he has been ordered to remove the same, by any of the road overseers, complaint to be made by any person feeling himself aggrieved; *Provided*, This section shall not apply to any person who shall lawfully fell any tree for use, and will immediately remove the same out of the road, nor to any person through whose land a public road may pass, who shall desire to drain his land, and shall give due notice to the overseer of such intention; *And, provided, further*, That any overseer of roads, after having given reasonable notice (to the owners) of the obstruction, or person so obstructing or plowing or digging ditches upon such road, may remove any such fence or other obstruction, fill up any such ditch or excavation, and recover the necessary cost of such removal from such owner or other person obstructing such road aforesaid, to be collected by said overseer before any justice of the peace having jurisdiction.

SEC. 70. [**Injuries to sidewalks, bridges, etc.—Penalty.**—If any person shall purposely destroy or injure any sidewalk, public bridge, culvert or causeway, or remove any of the timber or plank thereof, or obstruct the same, he shall forfeit a sum not less than \$8 nor more than \$100, and shall be liable for all damages occasioned thereby, and all necessary costs of rebuilding or repairing the same.

SEC. 71. [**Sidewalks, trees, hedge, etc.**—It shall be lawful for the owner or occupants of land bordering upon any public road to build sidewalks not to exceed six feet in width, and to plant shade and ornamental trees along and in such road at a distance not exceeding one-tenth of the legal width of the road from its margin, and also to erect and maintain a fence so long as it shall be actually necessary for the purpose of raising a hedge on said margin a distance of six feet from the within said marginal lines.

SEC. 72. [**Fast driving over bridge.**—Whoever shall ride or drive faster than a walk over any bridge, shall forfeit for every such offense the sum of \$5.

SEC. 73. [**Ditches, etc.**—The overseers of the several road districts are hereby authorized to enter upon any land adjacent to any public road in their respective districts, for the purpose of opening any ditch, drain, necessary sluice or water course, whenever it shall be necessary to open a water course from any road to the natural water courses, and to dig, open and clean ditches upon said land, for the

purpose of carrying off the water from said road, or to drain any slough or pond on said road; *Provided*, That unless the owner of such land, or his agent, shall first consent to the cutting of such ditches, the overseer shall call to his assistance three electors of his district, who shall appraise the damages sustained by such person. Such appraisers shall make their award in writing, and the same shall be paid out of any money in the hands of the overseer, out of or belonging to his district, and if there be none such, the same shall be paid by the county board, out of the county road fund.

**SEC. 74. [Jurisdiction of justices of the peace.]**—Justices of the peace shall have jurisdiction in all cases arising under this act, where any fine, penalty, or forfeiture imposed does not exceed their jurisdiction.

**SEC. 75. [Fire guards.]**—It shall be the duty of each overseer of roads during the month of August or September, in each year, to make provision for the prevention and spread of prairie fires in his district, by causing the grass along the line of the public roads, at least two rods in width on each side of said roads, where practicable, to be mown. Such grass shall be permitted to lie where it is cut, and shall not be raked or gathered together, but shall, at a suitable time, when dry be burnt. The labor to be performed under the provisions of this section shall be a part of the labor to be performed by persons assessed to pay labor or road tax, and they shall be allowed compensation at the rates hereinafter provided for other work on public roads.

**SEC. 76. [Road tax—Disposition—District road fund.]**—In counties not under township organization, one-half of all the moneys paid into the county treasury in discharge of road tax shall constitute a county road fund, which shall be at the disposal of the county commissioners for the general benefit of the county, for road purposes; the other half of all moneys paid into the county treasury in discharge of road tax, and all money paid in discharge of labor tax, shall constitute a district road fund, which shall be paid by the county treasurer to the overseer of the road district from which it was collected, and expended by him only for the following purposes: *First*. For the construction and repair of bridges and culverts, and making fire guards along the line of roads. *Second*. For the payment of damages of the right of any public road. *Third*. For the payment of wages of overseers, and for the expense of procuring the necessary guide-boards. *Fourth*. For the payment of the wages of commissioners of roads, surveyor, chainmen, and other persons engaged in locating or altering any county road, if the road be finally established or altered as hereinbefore provided. *Fifth*. For work and repairs upon road.

**SEC. 77. [Expenditure of road fund in another district.]**—The county commissioners shall have power, upon receiving a petition signed by at least two-thirds of the qualified electors of any district, to order that any road moneys belonging to the district be expended in any other district, under the direction of the proper overseer thereof; and in such case such overseer shall pay over all money in his hands to the overseer of the district in which such money is ordered to be expended and take his receipt for the same.

**SEC. 78. [Persons to work out tax—Notice.]**—It shall be the duty of each overseer of roads to give at least three days notice to all persons residing in his district liable to pay labor and road tax therein, either personally or in writing left at their place of abode, of the time when between the first day of April and the first day of October in each year, and the place where they may appear and pay their labor tax and three-fourths of their road tax in labor, and with what implements. And it shall be the duty of the county clerk in each county in the state of Nebraska to furnish to each overseer of roads in his county, on or before the first day of March in each year a list of all property subject to road tax in his district, the name of the owner or owners of the same, together with the amount of road tax due thereon, said road tax to be computed upon the assessment of the previous year. [Amended and took effect Feb. 28, 1881.]

**SEC. 79. [Allowance for work.]**—The overseer shall allow all persons

**SEC. 79.** Prior to the passage of this section and under the old law. sec. 8, G. S. 952, it was held that the

who may appear in pursuance to such notice and offering to pay their labor tax, and three-fourths [of] their road tax in labor, under his direction, the sum of \$1.50 for every day he shall actually work eight hours on such road, \$1.50 for each yoke of oxen, and \$1.50 for each span of horses he shall furnish agreeably to the requirements of the overseer; and for such labor performed the overseer shall give to such person a certificate, which certificate shall be received by the county treasurer in discharge of the labor tax and three-fourths of the road tax of such person as aforesaid. The one-fourth of the road tax shall be paid in cash; *Provided*, That any person who is a resident of the district not notified by the overseer to labor upon the roads as hereinbefore provided, shall be discharged from the payment of said labor tax and three-fourths [of] said road tax.

**Sec. 80. [Overseer's return to county treasurer].**—Each overseer of roads shall make a return to the county treasurer on or before the first day of November of each year, containing the names of each person liable to pay labor or road tax, or both, in his district, whom he has notified to labor upon the roads, as provided in section 78. Such returns shall be made under oath, and shall be conclusive evidence that notice to labor, as aforesaid, upon the persons therein named has been made by said overseer. If said overseer makes a false return, he shall be guilty of perjury, and be punished accordingly.

**Sec. 81. [Settlement of overseer].**—Overseers of roads shall make an annual settlement under oath with the board of county commissioners, at their first meeting in January, showing the amount of money which has come into their hands by virtue of their office; and how the same has been expended. The county commissioners, if they deem it expedient, shall have power to cite any overseer to appear before them at any other time, and make settlement as herein provided, giving him reasonable notice thereof.

**Sec. 82. [Allowance to overseer].**—The overseer shall be allowed one dollar and fifty cents per day, including the time necessarily spent in notifying the hands, superintending the work on roads, and making out his return, but not to exceed the sum of thirty dollars in any one year, which sum shall be paid out of the district road fund, after deducting his own labor tax and three-fourths of his road tax. If there is not sufficient money in the district road fund with which to pay said overseer, he shall be entitled to a certificate from the county board for the amount of labor performed, which certificate shall be received in payment of his own road tax for any succeeding year.

**Sec. 83. [Contracts for building bridges, roads, etc.].**—All contracts for the erection and repair of bridges and approaches thereto, for the building of culverts, and improvements on roads, the cost or expense of which shall exceed one hundred dollars, shall be let by the county commissioners to the lowest competent bidder, but no contract shall be entered into for a greater sum than the amount of money on hand in the county road fund derived from the levy of previous years, and two-thirds of the levy for the current year, together with the amount of money in the district road fund of the district where such work is to be performed; and every bidder, before entering on any work pursuant to contract, shall give bond to the county with at least two good and sufficient sureties, in any sum double the amount of the contract, which bond shall be approved by the county commissioners, conditioned for the faithful execution of the contract.

**Sec. 84. [Same—Bids].**—Before any contracts, as aforesaid, shall be let, the county commissioners shall advertise for bids therefor, and shall require bidders to accompany their bids with plans and specifications of the work, and they may accept the most suitable plan, and award the contract accordingly, or may reject any or all bids.

failure to give notice would not release lien of the tax and the fact that notice is required to be given to residents only does not invalidate the tax on property of non-residents. 4 Neb. 306.

**Sec. 83.** Public bridges are a part of public roads. 4 Neb. 158. 5 Id. 392. 6 Id. 212. County commissioners cannot either personally or by agent engage in the business of erecting bridges, etc. Such work must be done by contract. 6 Neb. 212. 10 Neb. 180. Probably under this section they could do so where the cost did not exceed \$100. They cannot purchase a private bridge. 9 Neb. 331.

**SEC. 85. [Same—Advertisement.]**—Such advertisement shall state the general character of the work, and shall be published four consecutive weeks in some newspaper printed and of general circulation in the county; and if there be no newspaper printed in the county, then such advertisement shall be published in some newspaper of general circulation therein. Where the cost of the work exceeds five hundred dollars, such advertisement shall also be published four consecutive weeks in some newspaper printed in, and of general circulation throughout the state.

**SEC. 86. [Same—Work, how paid for.]**—The cost of the work performed under any contract entered into under the provisions of the preceding sections, shall be paid from the money belonging to the district in which such work is performed; or, if that be insufficient, the balance shall be paid from the county road fund; *Provided*, That where under any law of this state bonds are voted to aid in the building or repairing of any bridge, the expense thereof shall be paid by such bonds, or the proceeds thereof.

**SEC. 87. [Bridges in two or more counties.]**—Bridges over streams which divide counties, and bridges over streams on roads on county lines, shall be built and repaired at the equal expense of such counties; *Provided*, That for the building and maintaining of bridges, over streams near county lines, in which both are equally interested, the expense of building and maintaining any such bridges, shall be borne equally by both counties.

**SEC. 88. [Contracts for such bridges.]**—For the purpose of building or keeping in repair such bridge or bridges, it shall be lawful for the county boards of such adjoining counties to enter into joint contracts; and such contracts may be enforced in law or equity, against them jointly, the same as if entered into by individuals, and they may be proceeded against, jointly, by any parties interested in such bridge or bridges, for any neglect of duty in reference to such bridge or bridges, or for any damages growing out of such neglect; *Provided*, That if either of such counties shall refuse to enter into contracts to carry out the provisions of this section, for the repair of any such bridge, it shall be lawful for the other of said counties, to enter into such contract for all needful repairs, and recover by suit from the county so in default, such proportion of the costs of making such repairs as it ought to pay, not exceeding one-half of the full amount so expended; but the provisions of this act shall apply only to those bridges which have been built or may hereafter be built by cooperation of the counties separated by said stream. [Amended Mar. 1. Took effect June 1, 1881.]

**SEC. 89. [Enforcement of such contracts.]**—If the county board of either of such counties, after reasonable notice in writing from the county board of any other such county, shall neglect or refuse to build or repair any such bridge, when any contract or agreement has been made in regard to the same, it shall be lawful for the board so giving notice to build or repair the same, and to recover, by suit, one-half (or such amount as shall have been agreed upon) of the expense of so building or repairing such bridge with costs of suit and interest from the time of the completion thereof, from the county so neglecting or refusing.

**SEC. 90. [Same—Judgment.]**—Any judgment so recovered against the county board of either of such counties, shall be a charge on such county, unless the jury shall in their verdict certify that the neglect or refusal of such board was wilful or malicious, in which case only the members of such board shall be personally liable for such judgment, and the same may be enforced against them in their personal and individual capacity, and upon their official bonds.

#### PROVISIONS SPECIALLY APPLICABLE TO COUNTIES UNDER TOWNSHIP ORGANIZATION.

**SEC. 91. [Township road fund.]**—In counties under township organization, all money paid to the township treasurer in discharge of township road tax, and all money paid in discharge of labor tax, shall constitute a township road fund, one half of which shall be held by said treasurer, subject to the order of the

town board, and which shall be at their disposal for the general benefit of the township, for road and bridge purposes; the other half of such money shall be paid by the town treasurer to the overseer of the district from which such tax is collected, and expended by such overseer only for the following purposes: *First.* For the construction and repair of bridges and culverts, and making fire guards along the lines of the roads. *Second.* For the payment of damages for right of way of any public road. *Third.* For the payment of wages of overseers, and for necessary guide boards. *Fourth.* For the payment of wages of commissioners of roads, surveyor, chainmen, and other persons engaged in locating or altering any county road, if the road be finally established or altered as hereinbefore provided. *Fifth.* For work and repairs on roads.

**SEC. 92. [Expenditure in another district.]**—The town board shall have power, upon receiving a petition signed by at least two-thirds of the qualified electors of any district, to order that any road moneys belong[ing] to the district be expended in any other district in such township, under the direction of the proper overseer thereof, and in such case such overseer shall pay all money in his hands to the overseer of the district in which such money is ordered to be expended, and take his receipt for the same.

**SEC. 93. [Notice to parties to work out tax.]**—It shall be the duty of each overseer of roads to give at least three days notice to all persons residing in his district liable to pay labor and road tax, either personally or by writing left at their usual place of abode, of the time when between the first day of April and first day of November in each year, and the place where they may appear and pay their labor tax and three-fourths of their township road tax in labor, and with what implements.

**SEC. 94. [Allowance for work.]**—The overseer shall allow all persons who may appear in pursuance of such notice the same allowances as in counties not under township organization, as provided in section 79 of this act, and the certificate thereof shall be received by the treasurer in discharge of the labor tax and three-fourths of the township road tax, of such person; the other one-fourth of such township road tax, and the county road tax, shall be paid in cash; *Provided,* That any person not notified by the overseer to labor upon the roads as hereinbefore provided, shall be discharged from the payment of said labor tax, and three-fourths of such township road tax.

**SEC. 95. [Overseer's return to town treasurer.]**—Each overseer of roads shall make a return to the township treasurer on or before the first day of November in each year, containing the names of each person liable to pay labor or road tax, or both, in his district, whom he has notified to labor upon the roads, as provided in section 93. Such return shall be made under oath, and shall be conclusive evidence that notice to labor as aforesaid upon the persons therein named has been made by said overseer. And when the township treasurer returns the duplicate tax list to the county treasurer, as provided by law, he shall accompany the same with the returns made to him by said overseers. If any overseer makes a false return, he shall be guilty of perjury, and be punished accordingly.

**SEC. 96. [Settlement of overseer.]**—Each overseer shall, at the time required by the town board, make a settlement of his accounts, showing the amount of money coming into his hands as such overseer, and how the same has been expended. In such settlement he shall be allowed the same amount for similar services by overseers in counties not under township organization, as provided in section 82, which sum shall be paid out of any money belonging to his district, after deducting his labor tax, and three-fourths of his township road tax; and if there be not sufficient money belonging to the district with which to pay said overseer, he may be paid in whole or in part out of the township road fund, or for any balance due him he may receive from the town board a certificate which may be received in payment of his own township road tax for any succeeding year.

**SEC. 97. [Contracts for building bridges, etc.]**—All contracts for the erection and reparation of bridges and approaches thereto, for the building of cul-

verts and improvements on roads, within the limits of any township, the cost or expense of which shall exceed one hundred dollars, shall be let by the town board to the lowest competent bidder; but no contract shall be entered into for a greater sum than the amount of money on hand in the township road fund, derived from the levy of previous years, and two-thirds of the levy for the current year, together with the amount of money on hand belonging to the district where such work is to be performed. The contract shall be let, and the successful bidder give bond as provided in sections 83, 84, and 85 for the letting of contracts in counties not under township organization; and all the provisions of said sections shall apply, so far as applicable, to the letting of contracts provided for in this section; *Provided*, That where any work is to be performed or contract let, the cost of which is to be paid by order of the county board entirely out of the county road fund, or by the entire county, the contract therefor shall be let by the county board in the same manner as provided in sections 83, 84, and 85, for the letting of such contracts in counties not under township organization.

SEC. 98. [**Work let by contract, how paid for.**].—Where any contract is let as aforesaid by the town board, the expense of which is to be borne exclusively by the township, it shall be paid from the money belonging to the district in which such work is performed; or, if that be insufficient, the balance shall be paid from the township road fund, and if the work be of general benefit to the entire township, the town board may, in their discretion, cause the same to be entirely paid for from the township road fund, or from the fund of each district *pro rata*; *Provided*, That if under any law of this state, bonds are voted to aid in the building or repairing of any bridge, the expense shall be paid by such bonds, or the proceeds thereof.

SEC. 99. [**Road on town lines.**].—Where a public road is located on township lines, the county board shall allot the part of such road which such town shall keep in repair, and the part so allotted shall be considered as wholly belonging to such town.

SEC. 100. [**Appropriation from county treasury.**].—When it shall be necessary to build, construct, or repair any bridge, or road, in any town, which would be an unreasonable burden to the same, the cost of which will be more than can be raised in one year by ordinary road taxes in such town, the town board shall present a petition to the county board of the county in which such town is situated, praying for an appropriation from the county treasury to aid in the building, constructing, or repairing of such bridge or road, and such county board may (a majority of all the members elect voting for the same) make an appropriation of so much for that purpose, as in their judgment, the nature of the case requires and the funds of the county will justify; said appropriation to be expended under the supervision of an authorized agent or agents of the county, if the county board shall so order. In such case, where the county grants aid, as aforesaid, the contract shall be let by the town board, under the provisions of sections 83, 84, and 85.

SEC. 101. [**Bridges on town lines.**].—Bridges over streams which divide township lines, and bridges over streams on roads on township lines, shall, if the expense thereof be not paid by the county board, be built and repaired at the equal expense of such towns; *Provided*, That for the building and maintaining of bridges over streams near township lines, in which both are equally interested, the expense of building and maintaining such bridges shall be borne equally by the townships so interested.

SEC. 102. [**Same—Contracts, how let.**].—Contracts for the purposes mentioned in the foregoing section may be entered into and enforced in the same manner as provided in sections 89 and 90, for the enforcement of similar contracts in counties not under township organization.

SEC. 103. [**Repealed Chap. 47 R. S. 342. G. S. 950.**]

SEC. 104. [**Special tax to pay road fund warrants.**].—That in order

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SECS. 104-106. "An act to provide for the payment of outstanding county road fund warrants." Laws 1879, 164. Took effect June 1, 1879.



to provide for the payment of outstanding road fund warrants issued by any organized county in this state prior to the repeal of the act authorizing their issue, the county commissioners of any county where such indebtedness exists be and the same are hereby authorized and empowered to levy a special tax not exceeding five mills upon the dollar of the valuation of said county, or so much thereof as may be necessary to pay all the outstanding indebtedness of the character hereinbefore mentioned. Said levy to be made by the county commissioners at their next regular annual meeting in July, 1879, while assembled for the purpose of levying other taxes as provided by law. Said tax to be collected by the county treasurer in the same manner as other county taxes are collected, and the said warrants to be paid by the county treasurer in the order in which they appear upon his warrant register. [1879 § 1, 164.]

SEC. 105. [**Same.**—In case the five mill levy hereinbefore mentioned in section one of this act shall not be sufficient to pay the entire amount of outstanding road fund warrants, the county commissioners in such counties where a deficiency exists shall annually thereafter make other levies for this purpose, not exceeding five mills on the dollar in any one year, until all the outstanding road fund warrants before mentioned shall have been paid. [Id. § 2.]

SEC. 106. [**When transferred to general fund.**—All moneys derived from the collection of taxes under this levy remaining in the hands of the county treasurer after all the road fund warrants shall have been paid, shall be transferred to the general fund of said county. [Id. § 3.]

## CHAPTER 79.—SCHOOLS.

### SUBDIVISION I.—SCHOOL DISTRICTS.

SECTION 1. [**"School" and "District" construed.**—The term school district as used in this chapter is declared to mean the territory under the jurisdiction of a single school board authorized by this chapter. The term school shall be construed to mean a school under the jurisdiction of a school board authorized by this chapter. [1881 § 1, chap. 78.]

SEC. 2. [**District a body corporate.**—Every duly organized school district shall be a body corporate, and possess all the usual powers of a corporation for public purposes, by the name and style of "school district number— of—county," and in that name may sue and be sued, purchase, hold and sell such personal and real estate as the law allows.

SEC. 3. [**Division of counties.**—Each organized county not already divided into school districts, or any part of such counties not so divided, shall be divided by the county superintendent into as many school districts as may be necessary.

SEC. 4. [**New districts—Formation.**—New districts may be formed from other organized districts under the following conditions only: *First.* The county superintendent shall have discretionary power to change the boundary of any school district, or to form a new district from one or more districts on a petition signed by one-third of the legal voters in each district affected. *Second.* The county superintendent shall not refuse to change the boundary lines of any district, or to organize a new district, when he shall be asked to do so by a petition from each school district affected, signed by two-thirds of all the legal voters in such district; *Provided,* That a notice of the said petition containing an exact statement of what changes in district boundaries are proposed, and when the petition is to be presented to the county superintendent, has been posted in three public places in each district affected, at least ten days prior to the time of presenting

NOTE.—"An act to establish a system of public instruction for the state of Nebraska." Approved and took effect Mar. 1, 1881.

SEC. 3. Districts should be limited in extent by the distance that scholars are able to attend school. 9 Neb. 336.

SEC. 5. The record should contain a minute detail of all proceedings in relation to the formation of the new district, and of the amount justly due the new from any old district out of which it may have been formed. 6 Neb. 545.

the petition to the county superintendent; *Provided*, That changes affecting cities shall be made upon the petition of the board of education of the district or districts affected. *Third*. No new district shall be formed between the first day of January and the first day of August. *Fourth*. When two districts are made from one, there must be two petitions, one from each part into which the district is to be divided. *Fifth*. No new district shall be formed containing less than six sections of land, nor shall any district be reduced by division or otherwise, so as to contain less than that amount, unless the district so formed, or the part of a district remaining after division, shall have an assessed valuation of property of not less than fifteen thousand dollars, and having not less than twenty children of school age.

SEC. 5. [**Notice by superintendent.**]—Whenever the county superintendent of any county shall form a new district it shall be the duty of the said superintendent to deliver to a taxable inhabitant of such district a notice in writing of the formation of such district, describing its boundaries, and specifying the time and place of holding the first meeting, which notice, with the fact of such delivery, shall be entered upon the record by the superintendent.

SEC. 6. [**Notice to voters.**]—The said notice shall also direct such inhabitant to notify every qualified voter of such district, either personally or by leaving a written notice at his or her place of residence, of the time and place of holding said meeting, at least five days before the time appointed therefor; and it shall be the duty of such inhabitant to notify the qualified voter of said district accordingly.

SEC. 7. [**Return of notice.**]—The said inhabitant when he shall have notified the qualified voters as required in said notice, shall endorse thereon a return, showing such notification with the date or dates thereof, and deliver such notice and return to the chairman of the meeting.

SEC. 8. [**Same—Record—Evidence.**]—The said chairman shall deliver such notice and return to the director chosen at such meeting, as hereinafter provided, who shall record the same at length in a book, to be provided by him at the expense of the district, as a part of the records of such district, which record shall be *prima facie* evidence of the facts therein set forth, and of the legality of all proceedings, in the organization of the district prior to the first district meeting; but nothing in this section contained shall be so construed as to impair the effect of the record kept by the county superintendent as evidence.

SEC. 9. [**District divided—Property—Indebtedness.**]—When a new district is formed in whole or in part from one or more districts possessed of a school house or other property, the county superintendent, at the time of forming such new district, or as soon thereafter as may be, shall ascertain and determine the amount justly due to such new district from any district or districts out of which it may have been in whole or in part formed, which amount shall be ascertained and determined as nearly as practicable according to the relative value of the taxable property in the respective parts of such former district or districts at the time of such division, and the fact that such school house or other property is not paid for shall not deprive such new district of its proportionate share of the value thereof; *Provided*, That such new district shall remain bound for such indebtedness to the same extent as though the new district had not been formed; unless in case of indebtedness not bonded the same shall be adjusted as hereinafter provided.

SEC. 10. [**Same—Bonded indebtedness.**]—If such old district shall be subject to any bonded indebtedness, and the amount to which such new district shall be entitled on account of any such property shall not exceed its proportionate share of such bonded indebtedness, the amount to which such new district shall be entitled as aforesaid shall be apportioned so as to come due in install-

SEC. 9. After the division, the old district has no authority to use property or funds to which the new one is entitled. 4 Neb. 267. 9 Id. 338. Where there is no finding or determination whatever by the superintendent as to property of any kind retained by a district out of which a new district was formed, his certificate to the county clerk stating the amount of tax to be levied on the old district to be paid to the new, when collected is a nullity. 6 Neb. 544.

ments proportionately at such times as the original indebtedness shall become due to the creditors of the old district.

**SEC. 11. [Same—Collection.]**—The amount of such proportion, when so ascertained and determined, shall be certified by the county superintendent to the county clerk who shall present the said amount to the county board at the session next succeeding, whose duty it shall be at the proper time or times to assess the same upon the taxable property of the district retaining the school house or other property of the former district, in the same manner as if the same had been authorized by a vote of such district, and the money so assessed shall be placed to the credit of the new district.

**SEC. 12. [Same—Payment.]**—When collected, such amount shall be paid over to the treasurer of the new district, to be applied to the use thereof in the same manner, under the direction of its proper officers, as if such sum had been voted and raised by said district for building a school house or other district purposes.

**SEC. 13. [Sale of property.]**—Whenever, by the division of any district, the school house or site thereof shall no longer be conveniently located for school purposes, and shall not be desired by the district in which it may be situated, the county superintendent of the county in which such school house and site shall be located, may, when ordered by the district, advertise and sell the same at public or private sale and apportion the proceeds; *Provided*, That when sold at private sale such sale shall not be binding until approved by the district interested.

**SEC. 14. [Proceeds—Division.]**—The money arising from the sale of school house and site, or otherwise, except teachers' fund, shall be divided among the several districts created in whole or part from the divided districts as nearly as practicable in proportion to the taxable property of the districts formed in whole or in part by such division.

**SEC. 15. [Teachers' fund—Division.]**—Money on hand belonging to the teachers' fund of said district shall be divided in proportion to the number of scholars in each district at the time of said division. The money designated in this and the preceding section, shall be divided at once, and not in the manner provided in section eleven (11) of this subdivision.

**SEC. 16. [Unbonded indebtedness.]**—Whenever a new district shall be organized from the territory of a former district, and there shall be any indebtedness of such former district which shall not be bonded, such unbonded indebtedness shall be taken into account in estimating the sum due from the old to the new district on account of school house or other property, and such new district shall be entitled to only the value of its proportionate share of such property after deducting its like share of such indebtedness.

**SEC. 17. [District change—Report to clerk—Map.]**—Every change in district boundary lines must be reported as soon as made to the county clerk and the county treasurer, by the county superintendent; and the county superintendent shall keep in the office of the county clerk a map of the school districts of the county, which map shall be revised as often as the boundary lines of districts are changed or new districts formed.

**SEC. 18. [Unsatisfactory division of property.]**—Whenever a district is dissatisfied with the division of school property made by the county superintendent, the points in dispute may be referred to three disinterested persons, no one of whom shall be a resident of either district interested in the matter at issue—one to be chosen by the school board of each district, and these two to choose a third, and the decision of any two of them shall be final.

**SEC. 19. [Arbitration.]**—The manner of proceeding shall be substantially as follows: The district desiring an arbitration shall make a demand in writing of the county superintendent within ten days after said superintendent has made his award. The county superintendent shall notify the other district or districts and direct them to choose arbitrators. The county superintendent shall appoint a time and place for the hearing, at which the arbitrators shall proceed immediately

to hear and determine the matter at issue according to justice and right, taking all the circumstances into consideration.

SEC. 20. [**Award.**].—The award of arbitrators shall be in writing and shall be filed with the county superintendent, and shall be final; *Provided*, That if no award is made by the committee within thirty days from the day of arbitration, the division made by the county superintendent shall be legal and valid.

SEC. 21. [**Arbitrator's fees.**].—The fees for such arbitration shall be as follows: Each person engaged as arbitrator shall receive two dollars per day during the time necessarily occupied, to be paid equally by the districts.

SEC. 22. [**District in two counties.**].—That when persons living in two or more counties desire to form a school district, it shall be the duty of the superintendents of the respective counties to authorize the said persons to organize such district, and the reports contemplated in this chapter shall be made to the superintendents of each county, parts of which form the district, of such property or children as may be within the limits of each such organized county.

#### SUBDIVISION II.—DISTRICT MEETINGS.

SECTION 1. [**Annual.**].—The annual school meeting of each school district shall be held at the school house, if there be one, or at some other suitable place within the district, on the first Monday of April of each year, and the school year shall commence with that day.

SEC. 2. [**Special.**].—Special meetings may be called by the district board, or any one of them, on the written request of any five legal voters of the district, by giving the notice required in the next succeeding section; and in all notices of special meetings the object of the meeting shall be stated, and no business shall be transacted at such meetings except such as is mentioned in the call.

SEC. 3. [**Notices.**].—All notices of annual or district meetings, after the first meeting has been held as aforesaid, shall state the day, hour and place of meeting, (which place shall be within the district), and shall be given at least fifteen days previous to such meeting by posting up copies thereof in three public places within the district; but no annual meeting shall be deemed illegal for want of such notice.

SEC. 4. [**Voters—Qualifications.**].—Every voter and every woman who has resided in the district forty days and is over twenty-one years of age and who owns real property in the district, shall be entitled to vote at any district meeting. Every voter and every woman, who has resided in the district forty days and is over twenty-one years of age and who owns personal property assessed in his or her name at the last assessment, shall be entitled to vote at any district meeting. Every voter and every woman who has resided in the district forty days and is over twenty-one years of age and who has children of school age residing in the district, shall be entitled to vote at any district meeting.

SEC. 5. [**Challenges—Oath.**].—If any person offering to vote at a school district meeting shall be challenged as unqualified, by any legal voter in such district, the chairman presiding at such meeting shall declare to the person challenged the qualifications of a voter, and if such person shall state that he or she is qualified, and the challenge shall not be withdrawn, the said chairman shall administer to him or her an oath, in substance, as follows: "You do solemnly swear (or affirm) that you are twenty-one years of age, that you have resided in this school district for forty days last past, that you own real property in the district or personal property that was assessed in your name at the last assessment (or have children of school age residing in the district) so help you God." And every person taking such oath shall be permitted to vote on all questions proposed at such meeting.

SEC. 6. [**Perjury.**].—If any person so challenged shall refuse to take such oath, his or her vote shall be rejected, and any person who shall wilfully take a false oath, or make a false affirmation under the provisions of the preceding section, shall be deemed guilty of perjury, and be punished accordingly.

**Sec. 7. [Challenge to viva voce vote.]**—When any question is taken in any other manner than by ballot, a challenge immediately after the vote has been taken, and previous to an announcement of the vote by the chair, shall be deemed to be made when offering to vote, and treated in the same manner.

**Sec. 8. [Adjournment—Change of site.]**—The qualified voters in the school district, when lawfully assembled, shall have power to adjourn from time to time, as may be necessary, to designate a site for a school house, by a vote of two-thirds of those present, and to change the same by a similar vote at any regular meeting; *Provided*, That in any school district where the school house is located three-fourths of a mile or more from the center of such district, such school house site may be changed to a point nearer the geographical center of the district by a majority vote of those present at any such school meeting.

**Sec. 9. [Superintendent to fix site.]**—When no site can be established by such inhabitants aforesaid, the county superintendent of the county in which the district is situated shall determine where such site shall be, and his determination shall be certified to the director of the district, and shall be final, except that such decision may be changed by the county superintendent on a written request of two-thirds of the qualified voters of the district.

**Sec. 10. [Site of school—Purchase—Lease—Tax.]**—The said qualified voters shall also have power, at any regular or special meeting, to direct the purchasing and leasing of any appropriate site, and the building, hiring, or purchasing of a school house, and the amount necessary to be expended the succeeding year, and to vote a tax on the property of the district for the payment of the same. Not to conflict with section 2.

**Sec. 11. [Tax limit for general purposes.]**—The legal voters at any annual meeting shall determine by vote the number of mills on the dollar of the assessed valuation which shall be levied for all purposes—except for the payment of bonded indebtedness and purchase or lease of school house—which number shall not exceed twenty-five (25) mills in any year. The tax so voted shall be reported by the district board to the county clerk, and shall be levied by the county board, and collected as other taxes.

**Sec. 12. [Same—Building purposes.]**—The legal voters may also, at such meeting, determine the number of mills, not exceeding ten mills on the dollar of assessed valuation, which shall be expended for the building, purchase, or lease of school house in said district, when there are no bonds voted for such purpose, which amount shall be reported levied and collected as in the preceding section; *Provided*, That the aggregate number of mills voted shall not exceed twenty-five (25) mills.

**Sec. 13. [Same—How expended.]**—The tax levied and collected, as provided by the preceding section, shall be expended under the direction of the district made at the annual meeting, or in the absence of such direction by the district, then such tax shall be expended as the district board of the district may direct.

**Sec. 14. [Time school taught.]**—They may also determine, at each annual meeting, the length of time a school shall be taught in the district the ensuing year, which, to entitle the district to any portion of the state fund, shall not be less than three months by a legally qualified teacher in the districts which have less than seventy-five pupils, nor less than six months in districts that have between seventy-five and two hundred pupils, nor less than nine months in the districts where there are more than two hundred pupils; and whether the money apportioned for the support of the school therein shall be applied to the winter or summer term, or a certain portion to each; *Provided*, That in case of epidemic sickness prevailing to such an extent that the school board in any district may deem it expedient to close any or all schools within their district, such closing of schools shall not prevent any school district from drawing their proper share of

Sec. 10. Contracts for erection of school house should be made with reference to funds on hand. 4 Neb. 360. The board cannot bind the district by an increased expenditure beyond the amount authorized by the district. 10 Neb. 242.



been legally organized when it shall have exercised of a district for the term of one year.

**vacancy.]**—District officers elected or appointed to offices until the next annual meeting.

**officer.]**—No person holding a school disqualification in the district in which he resides, or who is not one of the legal voters of the district, shall be an officer of the district.

Whenever a director or moderator or treasurer thinks best to refuse the duty, the matter shall be referred for adjudication to the county clerk, who shall proceed at once to investigate the matter, and if he finds that the officer has refused through contumacy or for neglect of duty, he may, on behalf of the county clerk, apply to the court for a writ of mandamus to compel the officer to perform his duty.

#### IV.—DISTRICT OFFICERS, POWERS AND DUTIES.

**Moderator.]**—The moderator shall have power, and it shall be his duty, to preside at all meetings of the district, to countersign all orders upon the district for moneys to be disbursed by the district, and all warrants of the county treasurer for moneys raised for district purposes, or apporportioned by the county superintendent; but, if the moderator shall be absent from any district meeting, the qualified voters present may elect a suitable person to preside at the meeting.

**Sec. 2. [Disorderly conduct at meeting.]**—If, at any district meeting, any person shall conduct himself or herself in a disorderly manner, and after notice of the moderator, or person presiding, shall persist therein, the moderator or person presiding may order him or her to withdraw from the meeting, and on his or her refusal, may order any constable, or any other person or persons to take him or her into custody until the meeting shall be adjourned.

**Sec. 3. [Same—Penalty.]**—Any person or persons who shall refuse to withdraw from such meeting on being so ordered as provided in the preceding section, or who shall wilfully disturb such meeting, shall, on conviction thereof, be fined a sum not exceeding twenty dollars, which fine shall be paid into the school fund of the district.

**Sec. 4. [Treasurer—Bond.]**—The treasurer of each district shall, within ten days after his election, execute to the district and file with the director a bond for not less than five hundred dollars in any instance, nor less than double the amount of money, as near as can be ascertained, to come into his hands as treasurer at any one time, with sufficient sureties, to be approved by the director and moderator, conditioned for the faithful discharge of the duties of his office; such bond shall be filed in the office of the county clerk of the county wherein the school district is situated; and if he shall fail to execute such bond, his office shall be vacant, and the board shall thereupon appoint a treasurer, who shall be subject to the same conditions and possess the same powers as if elected to that office.

**Sec. 5. [Moneys received and disbursed.]**—It shall be the duty of the treasurer of each district to apply for and receive from the county treasurer all school moneys apportioned to the district or collected for the same by said county treasurer, upon order of the director, countersigned by the moderator, and to pay over on the order of the director, countersigned by the moderator of such district, all moneys received by him.

**Sec. 6. [Cash book—Report.]**—The treasurer shall keep a book furnished

Sec. 4. See ante p. — 74.

Sec. 5. The district has no authority to release its treasurer from liability for money lost or misapplied by him. 10 Feb. 296.

the state apportionment of the school fund; *Provided, further*, That such sickness shall be sworn to by the district board, which oath shall be filed with the county superintendent within ten days after the annual school meeting of such school district or districts.

SEC. 15. [**Sale of property.**].—Said qualified voters shall also, at any regular meeting, authorize and direct by a two-thirds vote the sale of any school house site, building, or other property belonging to the district when the same shall no longer be needed for the use of the district. And when real estate is sold, the district may convey the same by deed, signed by the moderator of the district, and such deed, when acknowledged by such officer to be the act of the district, may be recorded in the office of the recorder of deeds of the county in which the real estate is situated, in like manner as other deeds.

SEC. 16. [**Suits—District interested in.**].—They may also give such directions and make such provision as they shall deem necessary, in relation to the prosecution or defense of any proceeding in which the district may be a party, or interested.

#### SUBDIVISION III.—DISTRICT OFFICERS.

SECTION 1. [**Election.**].—The qualified voters of every new district, when assembled pursuant to legal notice, and all existing districts at their annual meetings shall elect by ballot from the qualified voters of such district, a moderator for three years; a director for two years; and a treasurer for one year; and at the expiration of their respective terms of office, and regularly thereafter, their several successors shall be elected for the term of three years each, and all officers so elected shall hold their offices till their successors are elected or appointed, and qualified; *Provided*, That officers of existing organized districts shall continue and discharge the duties of their respective offices until the expiration of the same.

SEC. 2. [**New district.**].—When a new district is organized and officers elected at any other time than at the annual meeting, the time intervening between the date of such organization and the next annual meeting, shall constitute the first year in the term of such officers.

SEC. 3. [**Acceptance.**].—Within ten days after their election, these several officers shall file with the director, a written acceptance of the office to which they shall have been respectively elected, which shall be recorded by said director.

SEC. 4. [**District deemed organized.**].—Every such school district shall be deemed duly organized when any two of the officers elected at the first meeting, shall have filed their acceptance as aforesaid.

SEC. 5. [**Failure to organize.**].—In case the inhabitants of any district shall fail to organize the same, in pursuance of such notice as aforesaid, the said county superintendent shall give a new notice in the manner hereinbefore provided, and the same proceeding shall be had thereon as if no previous notice had been delivered.

SEC. 6. [**Appointed by superintendent.**].—In all cases where the county superintendent of any county shall form a school district therein, and where no election for school district officers shall be held therein, it shall be the duty of the county superintendent of the county in which such district is situated, to appoint the officers of such district from the legal voters thereof, which officers thus appointed shall severally file with the director a written acceptance of the offices to which they shall have been appointed, which shall be recorded by the director.

SEC. 7. [**Organization in such case.**].—Every such school district shall be deemed duly organized, whenever any two of the officers thus appointed shall have filed their acceptance as aforesaid, and such school district and its officers shall be entitled to all the rights, privileges, and immunities, and be subject to all the duties and liabilities conferred upon school districts by law.

SEC. 8. [**Organization presumed.**].—Every school district shall, in all



cases, be presumed to have been legally organized when it shall have exercised the franchises and privileges of a district for the term of one year.

Sec. 9. [**Term to fill vacancy.**].—District officers elected or appointed to fill vacancies shall hold their offices until the next annual meeting.

Sec. 10. [**Teacher when an officer.**].—No person holding a school district office shall be employed to teach school in the district in which he resides, unless upon a petition signed by two-thirds of the legal voters of the district, which petition shall be filed with the papers of the district.

Sec. 11. [**Disputed accounts.**].—Whenever a director or moderator refuses to sign orders on the treasurer, or the treasurer thinks best to refuse the payment of orders drawn upon him, the difficulty shall be referred for adjudication to the county superintendent, who shall proceed at once to investigate the matter, and if he finds that the officer complained of refuses through contumacy or for insufficient reasons, it shall be the duty of the superintendent, on behalf of the district, to apply to the proper court for a writ of mandamus to compel the officer to perform his duty.

#### SUBDIVISION IV.—DISTRICT OFFICERS, POWERS AND DUTIES.

SECTION 1. [**Moderator.**].—The moderator shall have power, and it shall be his duty, to preside at all meetings of the district, to countersign all orders upon the treasurer for moneys to be disbursed by the district, and all warrants of the director on the county treasurer for moneys raised for district purposes, or apportioned to the district by the county superintendent; but, if the moderator shall be absent from any district meeting, the qualified voters present may elect a suitable [person] to preside at the meeting.

Sec. 2. [**Disorderly conduct at meeting.**].—If, at any district meeting, any person shall conduct himself or herself in a disorderly manner, and after notice of the moderator, or person presiding, shall persist therein, the moderator or person presiding may order him or her to withdraw from the meeting, and on his or her refusal, may order any constable, or any other person or persons to take him or her into custody until the meeting shall be adjourned.

Sec. 3. [**Same—Penalty.**].—Any person or persons who shall refuse to withdraw from such meeting on being so ordered as provided in the preceding section, or who shall wilfully disturb such meeting, shall, on conviction thereof, be fined a sum not exceeding twenty dollars, which fine shall be paid into the school fund of the district.

Sec. 4. [**Treasurer—Bond.**].—The treasurer of each district shall, within ten days after his election, execute to the district and file with the director a bond of not less than five hundred dollars in any instance, nor less than double the amount of money, as near as can be ascertained, to come into his hands as treasurer at any one time, with sufficient sureties, to be approved by the director and moderator, conditioned for the faithful discharge of the duties of his office; such bond shall be filed in the office of the county clerk of the county wherein the school district is situated; and if he shall fail to execute such bond, his office shall be vacant, and the board shall thereupon appoint a treasurer, who shall be subject to the same conditions and possess the same powers as if elected to that office.

Sec. 5. [**Moneys received and disbursed.**].—It shall be the duty of the treasurer of each district to apply for and receive from the county treasurer all school moneys apportioned to the district or collected for the same by said county treasurer, upon order of the director, countersigned by the moderator, and to pay over on the order of the director, countersigned by the moderator of such district, all moneys received by him.

Sec. 6. [**Cash book—Report.**].—The treasurer shall keep a book furnished

Sec. 4. See ante p. — 74.

Sec. 5. The district has no authority to release its treasurer from liability for money lost or misapplied by him. 10 Neb. 298.

by the district, in which he shall enter all the moneys received and disbursed by him, specifying particularly the source from which money has been received, and to what fund it belongs, and the person or persons to whom, and the object for which the same has been paid out. He shall present to the district, at each annual meeting, a report in writing, containing a statement of all moneys received by him during the preceding year, and of the disbursements made by him, with the items of such disbursements, and exhibit the vouchers therefor, and at the close of the term of his office, shall settle with the district board, and shall hand over to his successor said books and all receipts, vouchers, orders and papers coming into his hands as treasurer of the district, together with all moneys remaining in his hands as such treasurer.

SEC. 7. [**Appear in actions for district.**].—It shall also be the duty of the treasurer to appear for and on behalf of the district in all suits brought by or against the same, whenever no other directions shall be given by the qualified voters in the district meeting, except in suits in which he is interested adversely to the district; and in all such cases the director shall appear for such district, if no other directions shall be given as aforesaid.

SEC. 8. [**Additional security.**].—Whenever by the failure of his sureties, or otherwise, the official bond of the district treasurer becomes in the opinion of the other members of the board insufficient to protect the district from loss, it shall be the duty of the director and moderator to demand additional security, or a new bond of the treasurer. If the treasurer refuse or neglect to procure a satisfactory bond and present it to the other members for approval within ten days after said demand, the said moderator and director may declare his office vacant, and proceed to call a district meeting to elect a new treasurer, to fill the unexpired term; *Provided*, That nothing in this section shall be construed to interfere with the liabilities of principals and sureties in such bond or the rights of sureties as defined by law regulating official bonds.

SEC. 9. [**Director.**].—The director shall be clerk of the district board, and of all district meetings when present, but if he shall not be present, the qualified voters may appoint a clerk for the time being, who shall certify the proceedings to the director to be recorded by him.

SEC. 10. [**Record.**].—The director shall record all proceedings of the district in a book furnished by the district, to be kept for that purpose, and preserve copies of all reports made to the county superintendent, and safely preserve and keep all books and papers belonging to his office.

SEC. 11. [**Hire teachers.**].—The director, with the consent and advice of the moderator and treasurer, or one of them, or under their direction, if he shall not concur, shall contract with and hire qualified teachers for and in the name of the district, which contract shall be in writing and shall have the consent of the moderator and treasurer, or one of them endorsed thereon, and shall specify the wages per week or month as agreed by the parties, and a duplicate thereof shall be filed in his office; *Provided*, That if the director shall refuse to make and sign such contract, when directed so to do by the moderator and treasurer, then it may be made and signed by the moderator and treasurer.

SEC. 12. [**Census.**].—Within ten days previous to the annual district meeting the director shall take the census of his district, and make a list in writing of the names of all the children belonging thereto, between the ages of five and twenty-one years, together with the names of all the taxpayers in the district. In case of the absence or inability of the director, such census shall be taken by the moderator or treasurer, or such person as they may appoint, and a copy of such list, verified by the oath of the person taking such census, by affidavit appended to or endorsed thereon, setting forth that it is a correct list of the names of all child-

SEC. 7. When the action is not brought by the treasurer the petition should state the cause. 10 Neb. 263.

SEC. 10. It is to this record alone that resort must be had to ascertain what the district has done, what taxes it has voted, etc., 4 Neb. 307.

SEC. 11. The board may remove teachers. 1 Neb. 176. 6 Id. 173. If the contract is signed by one who is a director *de facto* it will bind the district. 9 Neb. 56.

ren belonging to the district between the ages of five and twenty-one years, and that it was taken within ten days preceding the annual meeting, shall be returned with the annual report of the director to the county superintendent; *Provided*, That in cities of the first and second classes, thirty (30) days shall be allowed for taking said census.

**SEC. 13. [Care of buildings.]**—The director shall, with the concurrence of the moderator and treasurer, or either of them, provide the necessary appendages for the school house, and keep the same in good condition and repair during the time school shall be taught in said school house, and shall keep an accurate account of all expenses incurred by him as director. Such account shall be audited by the moderator and treasurer, and on their written order shall be paid out of the general school fund.

**SEC. 14. [Estimate of expenses—Statement of orders.]**—He shall present at each annual meeting an itemized estimate of the amounts necessary to be expended during the ensuing year for school purposes, and for the payment of the services of any school district officer; but no tax for these purposes shall be voted at any special meeting, unless notice of the same shall be expressed in the notice of such meeting, and unless such special meeting shall be held between the time for the annual meeting and the first Monday in June. He shall also present to the annual meeting a statement of all orders drawn on the county treasurer, and the amount of each and of all orders on the district treasurer and the amount of each, for what purpose and to whom given.

**SEC. 15. [Post notices.]**—He shall give the prescribed notice of the annual district meetings, and of all such special meetings as he shall be required to give notice of, in accordance with the provisions of this chapter, one copy of which for each meeting shall be posted on the outer door of the school house, if there be one.

**SEC. 16. [Orders on treasurer.]**—He shall draw and sign all orders upon the treasurer for all moneys to be disbursed by the district, and all warrants upon the county treasurer for moneys raised for district purposes, or apportioned to the district by the county superintendent, and present the same to the moderator, to be countersigned by him, and no warrant shall be issued until so countersigned.

**SEC. 17. [Annual report.]**—The director shall, within ten days after the annual district meeting, deliver to the county superintendent, to be filed in his office, a report, under oath, showing: 1st. The whole number of children belonging to the district, between the ages of five and twenty-one years, according to the census taken aforesaid; and any district board neglecting to take the enumeration, and make return of the same, shall be liable to said district for all school moneys which such district may lose by such neglect. 2d. The number attending school during the year under five, and also the number over twenty-one years of age. 3d. The whole number that have attended school during the year. 4th. The length of time the school has been taught during the year by a qualified teacher, the length of time kept by each, and the wages paid to each. 5th. The total number of days all scholars, between the ages of five and twenty-one years, have attended school during the year. 6th. The amount of money received from the county treasurer during the year. 7th. The number of mills levied for all school purposes. 8th. The kind of books used in the school. 9th. Number of children to whom text books are furnished, and kind of books. 10th. Such other facts and statistics as the superintendent shall direct.

**SEC. 18. [Superintendent may administer oaths.]**—For the purpose of attesting school reports and other purposes connected with the administration of the school law, county superintendents are hereby authorized to administer the required oaths.

**SEC. 19. [Statement—Valuation and taxes.]**—It shall be the duty of the director to furnish, for the use of the annual meeting in April of each year, a

SEC. 16. School district orders are subject to same defense against a bona fide holder for value as against the payee. 4 Neb. 359.

statement of the aggregate assessed valuation of all property in the district, and the amount of taxes, as near as may be, that will be collected for the use of the district.

SUBDIVISION V.—DISTRICT BOARD, POWERS AND DUTIES.

SECTION 1. [**Board.**].—The moderator, director, and treasurer, shall constitute the district board.

SEC. 2. [**Report of taxes voted.**].—Immediately after the annual district meeting, and not later than the first Monday in June, said board shall make and deliver to the county superintendent, and also to the county clerk of each county, in which any part of the district is situated, reports in writing, under their hands, of all taxes voted by the district during the current school year, to be levied on the taxable property of the district, and to be collected by the county treasurer at the same time, and in the same manner as state and county taxes are collected; and when collected to be paid over to the treasurer of the proper district, on the order of the director, countersigned by the moderator of said district.

SEC. 3. [**General management.**].—The district board shall have the general care of the school, and may establish all needful regulations for the management, not in conflict with the rules prescribed by the superintendent.

SEC. 4. [**Non-resident pupils.**].—Said board may also admit to the district school non-resident pupils, and may determine the rates of tuition of such pupils and collect the same in advance; *Provided*, That any person having real property in two adjoining districts may, with the consent of the district board where he resides, send the pupils of his family to the school in such adjoining district without tuition charge, by giving ten days notice to the school board of such adjoining district; *Provided further*, That a *pro rata* share of the school money apportioned to the district where such pupils reside shall be paid by the officers of that district to the district where said pupils attend school; *Provided further*, That in no case shall tuition be collected from non-resident pupils where the school board of pupil's residence consent to attendance in adjoining district, then the school money due the district where the pupils reside shall be paid to the district where pupils attend school; *Provided further*, That non-resident pupils shall not be allowed to attend high or graded schools in any incorporated village or city, unless by consent of the trustees or board having control of said high or graded schools.

SEC. 5. [**Suspension of pupils.**].—They may authorize or order the suspension or expulsion from the school, whenever in their judgment the interests of the school demand it, of any pupil guilty of gross misdemeanors or persistent disobedience, but such suspension shall not extend beyond the close of the term.

SEC. 6. [**Procure site and house.**].—They shall purchase or lease such site for a school house as shall have been designated by the district, in the corporate name thereof, and shall build, hire or purchase such school house out of the fund provided for that purpose, and shall make sale and conveyance of any site or other property of the district, when lawfully directed by the qualified voters at any annual or special meeting; *Provided*, That the qualified voters of the district may appoint a building committee to let contracts for and take charge of the work of building such school house.

SEC. 7. [**Title to site.**].—The district shall not in any case build a stone or brick school house upon any site, without having first obtained a title in fee to the same; and also that they shall not in any case build a frame school house on any site for which they have not a title in fee, without the privilege to remove the same when lawfully directed to do so by the qualified voters of the district at any annual or special meeting.

SEC. 1. A contract entered into and signed by persons styling themselves as director and moderator of a school district is their individual contract and not binding on the district. 4 Neb. 254. The action of a majority of the board will not bind the district without notice to or participation therein of the other members. *Id.*

SEC. 2. Taxes were voted by a district while comprising three townships. Before the levy  $2\frac{1}{2}$  townships were detached. *Held*, taxes should be levied on the district as it existed at the time of the levy. 9 Neb. 336. But where such taxes were levied in the district as it existed at the time they were voted and collected from property therein, *held*, that the new district could recover from the old the amount collected in its territory. *Id.*

**SEC. 8. [Payment of moneys.]**—The district board shall apply and pay over all school moneys belonging to the district, in accordance with the provisions of law regulating the same, as may be directed by the district, but, no school money apportioned, to any school district shall be appropriated to any other use than the payment of teachers' wages; and no part thereof shall be paid to any teacher who shall not have received a certificate, as required in this chapter, before the commencement of his or her school.

**SEC. 9. [Care of property.]**—The said board shall have the care and custody of the school house and other property of the district, except so far as the same shall be confided to the custody of the director.

**SEC. 10. [Vacancy in school district office.]**—Every school district office shall become vacant by the death, resignation or removal from office, or removal from the district of the incumbent, or by his absence from the district for a continuous period of sixty days at one time.

**SEC. 11. [Same—How filled.]**—The said board shall have power to fill by appointment any vacancy that may occur in their own number, and it shall be their duty to fill such vacancy after its occurrence; *Provided*, That in case such board shall, from any cause, fail to fill such vacancy, the same may be filled by election at a special school district meeting called for that purpose, by the qualified voters present, which meeting shall be called in the same manner, and be subjected to the same regulations as other special school district meetings. Persons elected under the provisions of this section, shall hold their office until the next annual election.

**SEC. 12. [Same, on division of district.]**—When, by a division of a district but one officer is left in the old district, the county superintendent shall appoint, to fill the vacant offices, suitable persons, who shall hold their offices till the next annual meeting, and till their successors are elected and have filed their acceptance.

**SEC. 13. [Officers not interested in contracts.]**—No school officer shall be party to any school contract for building or furnishing supplies, except in his official capacity as a member of the board.

#### SUBDIVISION VI.—HIGH SCHOOL DISTRICTS.

**SECTION 1. [District board.]**—Any district containing more than one hundred and fifty children, between the ages of five and twenty-one years, may elect a district board consisting of six trustees; *Provided*, The district shall so determine at an annual meeting, by a vote of the majority of the voters attending such meetings. When such change in the district board shall have been voted, the voters at such annual meeting shall proceed immediately to elect two trustees for the term of one year, two for a term of two years, and two for a term of three years, and annually thereafter two trustees shall be elected, whose term of office shall be three years, and until their successors shall have been elected and filed their acceptance.

**SEC. 2. [Officers.]**—Within ten days after their election, such trustees shall file with the directors a written acceptance of the office to which they have been elected, and shall annually elect from their own number a moderator, a director, and a treasurer and for cause may remove the same, and may appoint others of their own members in their places, who shall perform the duties prescribed by law for such officers in the primary school districts in this state, except as herein-after provided. The trustees shall have power to fill any vacancy that may occur in their number till the next annual meeting. Whenever in any case the trustees shall fail, through disagreement or neglect, to elect the officers named in this section within twenty days next after their annual meeting, the county superintendent of the county in which such district makes its annual report shall appoint the said officers from the members of said trustees.

**SEC. 3. [Trustees—Powers.]**—Said trustees shall have power to classify

and grade the scholars in such district, and cause them to be taught in such schools and departments as they may deem expedient; to establish in such district a high school when ordered by a vote of the district at any annual meeting, and to determine the qualifications for admissions to such schools, and the price to be paid for tuition on any branch therein; to employ all teachers necessary for the several schools of said district; to prescribe courses of study and text books for the use of said schools, and to make such rules and regulations as they may think needful for the government of the schools, and for the preservation of the property of the district, and also to determine the rates of tuition to be paid by non-resident pupils attending any school in said district.

**Sec. 4. [Annual statement.]**—The said trustees shall present at each annual meeting a statement in writing, of all receipts and expenditures on behalf of the district for the preceding year, and of all funds then on hand, and an estimate of the amounts necessary to be raised by the district, in addition to the money to be received from the primary school fund and from other sources, for the support of the schools of said district for the ensuing year, and for incidental expenses thereof; and the said district may, at the annual meeting, vote such sums, to be raised by tax upon the taxable property of said district, as may be required to maintain the several schools thereof for the year.

#### SUBDIVISION VII.—COUNTY SUPERINTENDENT.

**SECTION 1. [Election—Term.]**—There shall be a county superintendent in each organized county, whose term of service shall be two years, and who shall be elected at the same time and in the same manner as other county officers.

**Sec. 2. [Compensation.]**—The county commissioners, or a majority of them present at the first regular session of each year, shall determine the compensation to be paid to the county superintendent, but such compensation shall not be less than three dollars, nor more than five dollars for each day actually employed in the duties of his office; *Provided*, The number of days shall not be less than the number of school districts in said county, and one day for each precinct thereof for the examination of teachers. The superintendent shall file in the office of the county clerk a sworn statement of his account.

**Sec. 3. [Teacher's Examination.]**—The county superintendent shall examine all persons offering themselves as teachers for the public schools, and shall attend at the county seat upon the first Saturday in the months of August, November, February and May in each year, for that purpose; and twenty days before such examination he shall cause to be published in such county, notice of the time and place thereof; or, if there be no paper published in said county, then he shall cause to be posted up in three public places in the precinct where such examination is to take place, ten days prior to such examination, a notice of the time and place thereof. He may also hold examinations at such other times and places as he may appoint, but all examinations shall be in public.

**Sec. 4. [Teachers' certificates.]**—The county superintendent may endorse a certificate in force in any county of this state, or of any other state, without examination, and said endorsement shall render the said certificate valid in his county for such time as the superintendent may determine, not exceeding two years from the date of said endorsement, but in no instance for a longer time than said certificate was originally intended; *Provided*, That the superintendent shall have power to revoke said certificate for the same causes and in like manner as those granted by himself.

**Sec. 5. [Same.]**—He shall grant certificates in such forms as shall be prescribed by the state superintendent of public instruction, licensing as teachers all persons whom, on thorough and full examination, he shall deem qualified in respect to good moral character, learning, and ability to instruct and govern a school; but no certificate shall be granted to any person who shall not pass a satisfactory examination in orthography, reading, writing, geography, arithmetic,

physiology, English composition, and English grammar; *Provided*, That no person shall be entitled to receive more than three (3) third grade certificates.

SEC. 6. [**Same—Grades.**—There shall be three grades of certificates of teachers to be granted by the county superintendent, in his discretion, to wit: The certificate of the third grade shall be granted to persons who shall have passed satisfactory examination in the branches specified in the above section, which certificate shall license the holder thereof to teach in some special district, and shall not continue in force more than six months. The certificate of the second grade may be granted to any person of approved learning and character, who, in addition to the branches specified in the above section, shall pass a satisfactory examination in history of the United States, civil governments, book keeping, blackboard drawing, and theory and art of teaching, which certificate shall be valid throughout the county for one year, unless sooner revoked. The certificate of the first grade shall be granted to no person who has not taught at least one year, with approved ability and success, and who shall not pass a satisfactory examination in all the branches required to obtain a second grade certificate, and in algebra, geometry, botany, and natural philosophy, which certificate shall be valid throughout the county in and for which it was granted, for two years, unless sooner revoked.

SEC. 7. [**Same—Revocation—Record.**—The county superintendent, or any authority or corporation authorized to grant certificates to teachers, may revoke any such certificate for any reason which would have justified the withholding thereof when the same was given; as for gross negligence of duty, or for incompetency or immorality, which reasons shall not be spread on the records, unless requested by the teacher, but no certificate shall be revoked without notice by the superintendent, and an opportunity to explain or defend his conduct, if he desires such opportunity. No certificate shall be revoked except by the authority granting it, but the county superintendent shall report to the authority granting said certificate, the fact that it should be revoked, giving his reasons therefor. The superintendent shall keep a record of all certificates granted and annulled by him, with the grade, date, and duration of each, and shall deliver such record, with all other books and papers belonging to his office, to his successor.

SEC. 8. [**General duties.**—It shall be the duty of the county superintendent to visit each of the schools of his county at least once in each year, to examine carefully into the discipline and modes of instruction, and into the progress and proficiency of the pupils, and to make a record of the same, and to counsel with teachers and district boards as to the course of study to be pursued, and for the improvement of the instruction and discipline of the school; to note the condition of the school house and appurtenances thereto, and to suggest a place for new school houses to be erected, and for warming and ventilating the same, and for the general improvement of the school house and grounds; to promote, by public lectures and teachers' institutes, and by such other means as he may devise for the improvement of the schools in his county, and the elevation of the character and qualifications of the teachers thereof; to consult with the teachers and school boards, to secure general and regular attendance of the children of his county upon the public schools.

SEC. 9. [**Communication from state superintendent.**—It shall be the duty of the county superintendent to receive all such blanks and communications as may be directed to him by the state superintendent of public instruction, and to dispose of the same in the manner directed by the state superintendent.

SEC. 10. [**Report to same.**—The county superintendent shall examine into the correctness of the reports of the district boards, and may, when necessary, require the same to be amended, and shall endorse his approval on such as he shall find correct, and transmit duplicates thereof, together with such other information as may be required of him, to the state superintendent of public instruction, when required by said state superintendent.

SEC. 11. [**Orders from same.**—The county superintendents shall be

subjected to such rules and instruction as the state superintendent of public instruction may from time to time prescribe, and they shall report annually to the superintendent of public instruction, at such times as he may direct, of the official labors performed, and of the general condition and management of the schools under their charge, and such other information as may be required of them by said superintendent.

**SEC. 12. [Vacancy, how filled.]**—Whenever, by death, resignation, or removal, or otherwise, the office of superintendent shall become vacant, the county board shall have power to fill such vacancy.

**SEC. 13. [Negligent reports of districts.]**—Should any district neglect to send in the reports required by section 2, subdivision V, of this chapter, by the third Monday in May, it shall be the duty of the county superintendent to notify the officers of such districts that the report is due, and should be sent at once.

**SEC. 14. [Report of blind, deaf and dumb.]**—The county superintendent shall report on or before the first Tuesday in September of each year, to the superintendent of the blind asylum, the name, age, residence, and postoffice address of every person blind to such an extent as to be unable to acquire an education in the common schools, and who resides in the county in which he is superintendent, and also to the superintendent of the Nebraska institute for the deaf and dumb, the name, age, and post office address of every deaf and dumb person between the ages of five and twenty-one years, who resides within his county, including all such persons as may be deaf to such an extent as to be unable to acquire an education in the common schools.

#### SUBDIVISION VIII.—STATE SUPERINTENDENT.

**SECTION 1. [Office—Location.]**—The superintendent of public instruction shall keep an office, which shall be furnished for him, at the seat of government of the state, and he shall keep all books and papers pertaining to his office therein, subject at all times to the examination of the governor or auditor of state, or a committee from either branch of the legislative assembly.

**SEC. 2. [Teachers institutes.]**—He shall organize teachers normal institutes at such times and places as he shall deem practicable. He shall, as far as practicable, attend said institutes and provide proper instructors for the same, and in other ways seek to improve the efficiency of teachers, and advance the cause of education in the state.

**SEC. 3. [Visit schools.]**—He shall visit such schools as he may have it in his power to do, and witness and advise with teachers and school officers upon the manner in which they are conducted.

**SEC. 4. [Questions of law.]**—He shall decide disputed points in school law, and all such decisions shall be held to have the force of law till reversed by the courts.

**SEC. 5. [Forms of reports.]**—He shall prescribe forms for making all reports and regulations for all proceedings under the general school laws of the state.

**SEC. 6. [School laws.]**—He shall cause to be printed, in pamphlet form, the school laws and laws relating to the school lands, with blank forms prescribed by him, and furnish each county superintendent with a sufficient number to supply the district officers within his jurisdiction.

**SEC. 7. [Annual report.]**—He shall annually, on the first day of January, submit to the governor of the state a full report of the operations of his office during the year, which report shall contain a statement of the school funds of the state, and an account of the receipts and expenditures for the purpose of schools, a statement of the condition of the common schools and other educational institutions chartered or fostered by the state, embracing the number of schools of the several grades, the number and average compensation of the teachers, the names and compensations of county superintendents, the number of pupils attending the several schools, the enumeration of youth by counties, the value of school



houses, sites, apparatus, and furniture, a statement of such plans as he may devise for the better management of the school funds and the school system, and such other statements as he may deem expedient to communicate relating to his office and popular education.

SEC. 8. [**Same—Distribution.**].—He shall cause his report to be printed by the state printers, and shall deliver at the commencement of each regular session of the legislature one hundred copies thereof to the senate and four hundred copies to the house of representatives, and transmit one copy to each district director in the state, and one to each county superintendent.

SEC. 9. [**School fund—Apportionment.**].—He shall, semi-annually, on or before the third Monday in June and the last Monday in December, make an apportionment of the funds which are in the treasury and which are applicable to the support of schools, which apportionment shall be based upon the enumeration of youth reported to the state superintendent by the county superintendents.

#### SUBDIVISION IX.—THE TEACHER.

SECTION 1. [**Qualifications.**].—No person shall be accounted a qualified teacher within the meaning of the school law, who has not a certificate in force from a county superintendent, or one as provided for in subdivision 14, section 19 of this chapter (Subdivision "Schools in cities") or a certificate or diploma from a state normal school of Nebraska, a certificate from the state superintendent of public instruction, or a diploma from a state normal school of another state, approved by the state superintendent of this state.

SEC. 2. [**Monthly returns.**].—Every teacher shall make a monthly return to the director of the district, of the number of pupils attending his or her school, the names and ages of each, the days attended, the studies pursued, and no teacher will be entitled to receive pay in full for a term's service till the term summary is properly filled out and approved by the director.

SEC. 3. [**School month.**].—In the absence of any agreement between the director and teacher, to the contrary, twenty days shall constitute a school month.

SEC. 4. [**State certificate.**].—Permanent teachers of high character, and broad scholarship, and who have a successful experience, may upon examination by the state superintendent or by a committee of three competent teachers appointed by him, receive a professional state certificate, which shall authorize the holder to teach in any public school in the state, without further examination; *Provided*, That no life certificate shall be in force after its holder shall permit a space of three years to lapse without following some educational pursuit, unless said certificate be endorsed by the acting state superintendent. *Provided, further*, That graduates of colleges and universities of good standing, who have received a certificate of the first grade in this state and who shall have taught in any high school in the state with ability and success for at least three years, shall be entitled to a professional certificate without further examination.

SEC. 5. [**Same—Studies requisite.**].—The branches required for a professional state certificate, shall be the following, to wit: Written arithmetic, U. S. history, reading and elocution, English grammar, common and physical geography with map drawings, mathematical geography and projection, school economy, physiology, algebra, natural philosophy, chemistry, composition and rhetoric, book keeping, plane and solid geometry, plane trigonometry, geology, zoology, botany, English literature, general history, political economy, intellectual philosophy, moral philosophy, logic, astronomy, civil government and school laws, history of education, and the theory and art of teaching.

#### SUBDIVISION X.—TEACHERS INSTITUTES.

SECTION 1. [**Kinds.**].—For the purpose of allowing teachers an opportunity to improve themselves in the art of teaching, two kinds of teachers institutes shall be held in the state, viz: normal institutes to be organized by the state superintendent, and county institutes to be organized by the county superintendents.

**SEC. 2. [Normal institutes.]**—Normal institutes shall be organized at such times and places as the state superintendent shall deem practicable. He shall fix the length of term, designate what counties shall be included, and provide competent instructors to conduct them.

**SEC. 3. [Attendance by superintendent.]**—It shall be the duty of the county superintendents of the counties included in such district to attend such institute, at least one week, for the purpose of comparing notes with the state superintendent, and other county superintendents on the methods of school work.

**SEC. 4. [Expenses, how defrayed.]**—For the purpose of defraying the expenses of these institutes there is hereby appropriated the entire institute fund of the county in which the institute is located; and the further sum of two dollars to be paid out of the institute fund of any county from which any teachers go to attend said institute, for each teacher who attends from such county.

**SEC. 5. [Institute fund.]**—To form a fund to defray the expense of institutes, each teacher examined for a certificate, or who has a certificate renewed or indorsed by the county superintendent, shall pay the sum of one dollar to the county superintendent, who shall, at the end of each month, deposit all such sums in the county treasury, to be designated the institute fund. To the sum thus raised the county board, if they deem it desirable, may add the sum of twenty-five dollars from the public funds of the county.

**SEC. 6. [Same—Disbursements.]**—All disbursements from this fund shall be by order of the county superintendent, and upon bills approved by him, which bills shall be filed in the office of the county treasurer.

#### SUBDIVISION XI.—SCHOOL FUNDS.

**SECTION 1. [Levy for school purposes.]**—For the purpose of affording the advantages of free education to all the youth of this state, the state common school fund, in addition to the funds derived from the sale of school lands and interest thereon, and fines and forfeitures as provided by statutes and the constitution, shall be further increased by annual levy and assessment of not to exceed  $1\frac{1}{2}$  mills upon the dollar valuation on the grand list of the taxable property of the state; and the amount so levied and assessed shall be collected in the same manner as other state taxes, and when collected shall be semi-annually distributed to the several counties of this state, in proportion to the enumeration of scholars, and be applied exclusively to the payment of teachers wages.

**SEC. 2. [Collections—Report to the state treasurer.]**—The county treasurer shall collect, or cause to be collected, the fines and all moneys for school purposes in his county, and take all proper measures to secure to each district its full amount of school funds, and all county treasurers shall report to the state treasurer and state auditor semi-annually, on or before the third Monday in April and the first Monday of November, and at such other times as the auditor may require, a statement showing the whole amount of moneys collected on account of state, county, and district school tax, and from all other sources respectively, noting the interest separately, and the amount received on account of licenses and fines, and from all other sources from which school funds are derived, together with a statement showing the amount paid out, to whom and on what account, and at the same time the county treasurer shall pay over to the state treasurer all funds and moneys, from whatever source derived, belonging to the general school fund in his hands, and make a settlement thereof with the state treasurer.

**SEC. 3. [Exhibit of state treasurer—Apportionment to counties.]**—The state treasurer shall, semi-annually, on or before the third Monday in May and the first Monday in December, make a complete exhibit of all moneys

SEC. 1. See sec. 75, ante p. 413.

SEC. 2. The treasurer may maintain an action to recover fines, forfeited recognizances and liquor license money belonging to the school fund. 5 Neb. 309. 9 Id. 352, 403. But the county is not liable for the acts of the treasurer in disbursing or disposing of such funds. 9 Neb. 405.

belonging to the school fund of the state, as returned to him from the several counties, together with the amount derived from other sources, and deliver the same duly certified to the state superintendent; and within twenty days thereafter the state superintendent shall make the apportionment of said funds to such counties according to the *pro rata* enumeration of scholars in each county last returned from the county superintendent, and certify the apportionment of each to the county superintendent of the proper county and to the state auditor, who shall draw a warrant on the state treasurer in favor of the various counties for the amount so specified by the state superintendent.

**SEC. 4. [Apportionment to districts.]**—The several county superintendents shall immediately and within twenty days after receiving such apportionments, and after adding thereto all moneys received by the county treasurer on account of fines and licenses, apportion the entire amount as follows, to wit: One fourth of the whole amount to be distributed equally to the several districts in the county, and the remaining three-fourths of the whole to be distributed to the several districts in his county *pro rata*, according to the enumeration of scholars last returned by the directors of the various districts, and no district, city, or village, which shall have failed to sustain a school for the length of time required by section 14, subdivision II. of this chapter, shall be entitled to receive any portion of the fund.

**SEC. 5. [New districts.]**—When a new district is formed from other districts where during the preceding school year school has been kept open the term required by law, such new district will be held and deemed to have had school the lawful time, and apportionment shall be made to it accordingly.

**SEC. 6. [Fractional district.]**—In making the "one-fourth" apportionment each fractional district shall receive one-half as much as a full district.

**SEC. 7. [Certificate of apportionment.]**—The county superintendent shall, immediately after making such apportionment, enter the same in a book kept for that purpose, and shall furnish the county treasurer with a certified copy of such apportionment, and each of the directors in the respective districts in his county a certificate, showing the amount due such district, which amount shall be subject to the order of the director on the county treasurer, when properly countersigned by the moderator.

**SEC. 8. [No fees for receiving or paying.]**—County treasurers are not allowed to charge a per cent. for receiving and disbursing the state school appropriation.

**SEC. 9. [Misuse of funds.]**—School district treasurers are forbidden to lend or use any part of the school moneys which may be in their hands under penalty of fine and imprisonment, under the provisions of the statute regarding embezzlement.

**SEC. 10. [Apportionment, when drawn.]**—Hereafter before a school district treasurer shall be allowed to draw the state apportionment from the county treasurer he must present a certificate from the county superintendent setting forth that such district has had the legal number of months school, has made the census report properly, and has made the proper financial report required by law.

#### SUBDIVISION XII.—SCHOOL HOUSE SITES.

**SECTION 1. [Appropriation—Appraisers.]**—If the owner of any real estate on which a school board may desire to locate a school house, refuses or neglects to grant the site on his or her premises, or if such owner cannot be found, the county superintendent shall appoint three disinterested persons, none of whom shall be residents of the district, whose duty it shall be, after taking an oath to faithfully discharge the duties imposed on them by this subdivision, to inspect such real estate and assess the damages which such owner shall sustain by the appropriation of his land for the use of said house and school, and make a report to said county superintendent, giving amount of land and damages, with exact location of land, and who shall file and preserve the same in his office. Each per-

son acting as such appraiser shall receive the sum of two dollars per day for his services.

**SEC. 2. [Site—Use—Reversion.]**—The school board shall pay the cost of this appraisement, and after paying to the owner of the land the amount of damages assessed may enter upon and occupy the land as long as the district desires to use it for district purposes; but should the same cease to be used for school purposes it will revert back to the owner of the fee simple of the land from which it was taken on the payment by him of the amount originally paid for the land without interest.

**SEC. 3. [Extent of site taken.]**—When land is thus taken without the consent of the owner, it shall not be more in amount than one acre, and all orchards, gardens, public parks, shall not be liable to be thus taken, nor shall land be taken, within twenty rods of any residence.

**SEC. 4. [Appeal from appraisement.]**—The owner of land thus taken may appeal to the district court, and such appeal shall be taken within 60 days and in the same manner and by the same proceedings as in cases of condemnation by a railroad company for right of way, but the school board shall not be liable for costs of appeal unless the court grant greater damages than the committee of appraisement gave.

**SEC. 5. [Site on state land.]**—When it is desired to locate a school house site on school land belonging to the state, the state land commissioner is hereby authorized to sell to the district not less than one nor more than four acres, and give a deed to the district in fee simple in the name of the state as in other cases.

#### SUBDIVISION XIII.—THE STATE NORMAL SCHOOL.

**SECTION 1. [Direction.]**—The state normal school shall be under the direction of a board of education, consisting of seven members, five of whom shall be appointed by the governor for a term of five years each, and the state treasurer and the state superintendent of public instruction shall by virtue of their office be members of said board; *Provided*, That the present appointed members of the board shall continue to hold their several offices till the limit of the time for which they were appointed. All vacancies occurring in the board shall be filled by appointment by the governor.

**SEC. 2. [Officers of board.]**—The members of the board of education shall annually elect a president and a secretary from among their own number, and the state treasurer shall be treasurer of the board by virtue of his office.

**SEC. 3. [Secretary duties—Report.]**—It shall be the duty of the secretary to keep an exact and detailed account of the doings of the board, and on the first day of January of each year he shall transmit to the governor a report of all expenditures made during the preceding years, vouchers for which shall be kept on file in the office of the secretary and open to the inspection of the governor, auditor, and members of the legislature.

**SEC. 4. [Teachers—Employees.]**—The said board shall have power to appoint a principal, assistant teachers, and such other employees as may be required, to fix their compensation and prescribe their duties. They shall have power to remove all persons appointed by them, provided that the affirmative votes of four members of the board shall be necessary to remove a principal or an assistant during the time for which such persons were appointed.

**SEC. 5. [Compensation of board.]**—The board of education shall receive no compensation for their services, but shall be reimbursed actual expenses incurred in attending upon meetings of the board.

**SEC. 6. [Meetings.]**—The board shall hold each year two regular meetings, the last week of the spring term in June, and the last week of the winter term in December, and such special meetings as may be found necessary.

**SEC. 7. [Property—Preservation.]**—The board shall adopt all needful rules and regulations for the careful preservation of the buildings, furniture, apparatus, grounds, timber, shrubbery, &c., belonging to the school.

SEC. 8. [**Principal.**—The principal shall be the chief executive officer of the school, and shall be responsible to the board for the control and management of the same. All teachers and other subordinates in said school, shall be under the direction of the principal, subject to the general regulations of the board.

SEC. 9. [**Morals of pupils—Religious tests.**—The board in their regulations, and the principal in his supervision and government of the school shall exercise a watchful guardianship over the morals of the pupils, but no religious or sectarian test shall be applied in the selection of teachers, and none shall be adopted in the school.

SEC. 10. [**Diplomas—Certificates.**—Any student having completed the common school course shall be entitled to a certificate, good for two years, in any part of the state; any student completing the higher course of study in a satisfactory manner, shall be entitled to a diploma, which diploma will entitle the holder to teach in any of the schools of the state without further examination for the space of three years. Any graduate of the higher course, who shall after graduation, teach two annual terms of school of not less than six months each, or their equivalent, and shall produce a certificate of good moral conduct, and satisfactory discharge of professional duties from the board or boards of directors of the district or districts in which the applicant taught, countersigned by the county superintendent of the proper county or counties, shall be entitled to receive an additional diploma, good for life; *Provided*, That any teacher producing satisfactory proof of three years successful teaching previous to graduation in the higher course of study, may receive upon graduation a diploma, good for life; *Provided*, That no life diploma shall be in force after its holder shall permit a space of three years to lapse, without following some educational pursuit, unless said diploma be endorsed by the acting state superintendent.

SEC. 11. [**Control of funds.**—All funds appropriated for the use and benefit of the normal school, together with the income arising from the lease and sale of the endowment lands belonging to said school, shall be under the direction and control of said board of education, subject to the provisions herein contained. The treasurer shall pay, out of the proper funds, all drafts for moneys to be expended under the provisions of this subdivision, such orders or drafts to be drawn by the auditor on certificates by the secretary, countersigned by the president of the board. No such certificates shall be given except upon accounts audited and allowed by the board in open meeting.

SEC. 12. [**Endowment funds.**—All the lands remaining unsold of the twenty sections heretofore appropriated as an endowment fund for the state normal school, and all the endowment fund hitherto derived from the sale of such lands, shall be, and the same is, hereby confirmed as such endowment, to be forever used for this purpose.

SEC. 13. [**Matriculation fees—Library fund.**—Students, when entering the school for the first time, shall pay a matriculation fee of five dollars. The moneys thus received shall be paid into the hands of the state treasurer, and shall be held as a library fund, and the board of education shall, from time to time, appropriate the same for the purchase of books for the normal school library.

SEC. 14. [**Dormitory fund.**—All moneys received for the use of rooms in the dormitory shall be expended by the board, in repairs of dormitory and the furniture of the same, whenever such repairs are needed.

SEC. 15. [**Purpose of school.**—The exclusive purpose of this school is the training and instruction of persons, both male and female, in the arts of teaching and managing schools, and in the principles and practice of the various branches of learning taught in our public schools.

SEC. 16. [**Admission of pupils.**—The board shall make such rules and regulations for the admission of pupils to the school as may seem to be best for the interest of the school and not inconsistent with the purpose for which the school has been established.

## SUBDIVISION XIV.—SCHOOLS IN CITIES.

**SECTION 1. [Districts—Body corporate.]**—That each incorporated city, in the state of Nebraska, or those hereafter incorporated as such, having a population of more than two thousand inhabitants, including such adjacent territory as now is, or hereafter may be attached for school purposes, shall constitute one school district, and be known by the name of "the school district of (name of city,) in the county of (name of county,) in the state of Nebraska," and as such, in that name, shall be a body corporate, and possess all the usual powers of a corporation for public purposes, and in that name and style may sue and be sued, purchase, hold, and sell such personal and real estate, and control such obligations as are authorized by law, and the title to all school buildings or other property, real or personal, owned by any school district within the corporate limits of any city, shall, upon the organization of a district under the provisions of this subdivision vest immediately in the new district; and the board of education by this subdivision provided, shall have exclusive control of the same for all purposes herein contemplated; *Provided*, That any territory not included within the corporate limits of any city, and containing territory or a number of children sufficient to constitute a school district under the provisions of this chapter, may, by petition signed by at least a majority of the legal voters of such territory, and a majority of the board of education of such city, be by the county superintendent erected into a separate district under the conditions imposed by this chapter; *Provided, further*, That in case any city above described shall embrace more than one entire school district and the fractional part of another school district shall extend within the corporate limits of said city, the fractional part so embraced within said corporate limits shall be exempt from the provisions of this subdivision, until such time as a majority of the legal voters of said fractional part shall petition the board of education of said city to be included in said district, and upon the receipt of such petition by said board, the said fractional part shall be included within the said district, for all purposes of this subdivision.

**SEC. 2. [General control—Free school.]**—That all schools organized within the limits of said cities shall be under the direction and control of the boards of education authorized by this subdivision. Such schools shall be free to all children between the ages of five and twenty-one years, whose parents or guardians reside within the limits of said district.

**SEC. 3. [Board of education.]**—That the boards of education contemplated by this subdivision shall consist of six members who shall be elected on a general ticket and shall hold their offices for the term of two years; *Provided*, That at the first election after the taking effect of this act, there shall be elected six members, three to serve two years, and three to serve one year, the term of service to be decided by lot, and annually thereafter three shall be elected to serve for two years.

**SEC. 4. [Elections.]**—That the ballots for the election of members of the board of education, for authorizing the issuance of bonds, or the purchase of sites, and erection of buildings, shall in all cases be deposited in boxes especially prepared for that purpose, and be received, and returns made by the regular election board; but the returns for the election of members shall be canvassed in the same manner as provided for in the case of city officers; the returns for the issuance of bonds, purchase of sites, and erection of buildings, shall be made to, and canvassed by, the board of education.

**SEC. 5. [Oath—Vacancy.]**—That all persons elected as members of boards of education, shall on or before the first Monday of the month following their election, take and subscribe the usual oath of office. In case any person elected shall fail so to do, his election shall be void, and the vacancy thereby occasioned shall be filled by the board, as hereinafter provided.

**SEC. 6. [Meetings.]**—That the regular meetings of the boards of education shall be held upon the first Monday of each month; but special meetings may be

held, from time to time, as circumstances may demand, and all meetings of the board shall be open to the public, unless otherwise specially ordered.

**SEC. 7. [General power—Compensation.]**—That the boards of education shall have power to select their own officers, make their own rules and regulations, subject to the provisions of this subdivision; but no member of the board, excepting the secretary, shall receive or accept any compensation for services performed in discharging the duties of his office.

**SEC. 8. [Officers—Superintendent.]**—That the members of each board of education, at their first regular meeting succeeding their election, each year, shall elect a president, vice-president and secretary from their number, who shall serve for the term of one year, or until their successors are elected; they shall also elect at their regular meeting, in July annually, one superintendent of public instruction, who shall be the principal teacher of the school, with such salary as the board may deem just. The election of the officers of the board, of the superintendent and teachers, and for filling vacancies in the board shall be by ballot, and no person shall be declared elected, except he receive the vote of a majority of all the members of the board.

**SEC. 9. [President.]**—That it shall be the duty of the president to preside at all meetings of the board, to appoint all committees, whose appointment is not otherwise provided for, and to sign all warrants ordered by the board of education to be drawn upon the city treasurer for school moneys.

**SEC. 10. [Vice president.]**—That it shall be the duty of the vice president to perform all the duties of the president, in case of his absence or disability.

**SEC. 11. [Secretary.]**—That it shall be the duty of the secretary to be present at all meetings of the board, to keep an accurate journal of its proceedings, to take charge of its books and documents, to countersign all warrants for school moneys drawn upon the city treasurer by order of the board, to apply for and receive school funds from the county treasurer, or other person to whom such funds are payable by law and deposit the same with the treasurer of the board and to perform all such other clerical duties as the board may require; and for his services he shall receive such salary as the board may deem adequate.

**SEC. 12. [Same—Bond—Oath.]**—That before entering upon the discharge of his duties, the secretary of the board shall give bonds in the sum of one thousand dollars, with good and sufficient sureties, and shall take and subscribe an oath or affirmation, before a proper officer, that he will support the constitution of the state of Nebraska, and faithfully perform the duties of his office.

**SEC. 13. [Treasurer.]**—The city treasurer of such city shall be, ex-officio, treasurer of the board of education; he shall attend all meetings of the board, when required to do so; shall prepare and submit in writing a monthly report of the state of his finances, and shall pay school moneys only upon a warrant, signed by the president, or in his absence by the vice-president, and countersigned by the secretary; *Provided*, That in cities of the first class the city treasurer of such city shall be ex-officio treasurer of the board of education, who shall perform all duties and be subject to all the liabilities of the treasurer of the board of education as herein provided.

**SEC. 14. [Property of districts merged.]**—That within ten days after the permanent organization of a board of education, as provided for in this subdivision, it shall be the duty of all officers of school districts within the limits of cities aforesaid, to deliver to the officers of the board, all property, funds and papers entrusted to their care, for the use of the public schools of such cities, and all funds thus received shall be immediately paid to the treasurer of the board and be by him placed to the credit of the school district provided by this subdivision.

**SEC. 15. [Board—Vacancy.]**—That the boards of education shall have power to fill any vacancies which may occur in their body, from among the legal voters who are taxpayers in the ward in which such vacancy shall occur; *Provided*, That any vacancy occurring more than ten days previous to the annual city elections, and leaving an unexpired term of more than one year, shall be filled at the first

city election thereafter, and the ballots and returns shall be designated as follows :  
"to fill unexpired term."

SEC. 16. [**Quorum.**].—That a majority of all the members of each board of education shall constitute a quorum, but a less number in attendance, at any regular meeting, shall have, and a quorum at any special meeting may have, power to compel the attendance of absent members, in such manner, and under such penalties as such board shall see fit to prescribe, and the absence of any member from four consecutive regular meetings of the board, unless on account of sickness or consent of the board, removal from the district, or resignation accepted by the board, shall vacate his position on the board, and such vacancy shall be filled in accordance with the provisions of this subdivision.

SEC. 17. [**Accounts—Money when appropriated.**].—That all accounts shall be audited by the secretary, approved by a committee, to be styled the committee on claims, and no expenditure greater than two hundred dollars shall be voted by the board, except in accordance with the provisions of a written contract; nor shall any money be appropriated out of the school fund, except on a recorded affirmative vote of a majority of all the members of the board.

SEC. 18. [**Census.**].—That the boards of education shall annually cause to be taken an enumeration of all persons between the ages of five and twenty-one years, residing in the district, who shall report the same, together with such other information as required by sections ten and fifteen, of subdivisions IV of this chapter, to the county superintendent of public instruction at the time specified by law for like returns from other districts.

SEC. 19. [**Examination of teachers.**].—That all persons making applications to boards of education as teachers in graded and high schools therein, shall be required to produce a legal certificate given by some authority authorized to grant teachers' certificates or from an examining committee appointed by the board. And for such purpose the board of education is authorized to appoint three competent persons, at such times as may be deemed expedient, who shall be styled "the examining committee of the board of education," and whose duty it shall be to examine all persons who may apply to them as teachers, and teachers receiving such certificates setting forth that such person is competent to teach in the public schools of the city, and is a person of good moral character, shall be entitled to all the benefits arising from a certificate issued to any teacher under the laws of this state. Any certificate granted by such committee may be revoked by the board of education, for any reason which would have justified the withholding thereof when the same was granted, or for gross negligence of duty, incompetency, or immorality.

SEC. 20. [**Board not interested in contracts.**].—It shall be unlawful for any member of the board of education to have any pecuniary interest, either directly or indirectly, in any contract for the erection of school houses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools.

SEC. 21. [**Disposal of property.**].—No school property of any kind belonging to any school district shall be sold by the board of education, except at a regular meeting of the same, and not then without an affirmative recorded vote of at least two-thirds of all the members of the board.

SEC. 22. [**Payment of debts—Funding bonds.**].—Each of the school districts provided for in section one of this subdivision shall have the power, and it shall be the duty of the board of education, to provide for the payment of debts created by school districts or other school organizations superseded by the districts herein provided for, when such debts shall have been incurred in the erection of school houses, or for other school purposes; if any portion of such debts shall be in the form of bonds, if issued for a valuable consideration and in accordance with law, the validity of which has not been called in question, or if called in question, have been declared by courts of last resort to be valid, the holder or holders thereof, on surrendering the same to said board, shall have the right to demand, and it shall



be the duty of said board, in the name of the district created by this subdivision, to cause to be issued other bonds of like amount, of the same tenor and effect as to payment of principal and interest as the bonds surrendered. This provision shall also apply to cases where only a part of a district shall be embraced within the district created by this subdivision, whenever said fractional part shall petition and become a part of said district, as provided for in section one of this subdivision; *Provided*, The latter shall assume and pay only such proportion of the debt of the divided district as the assessed valuation of the part taken therefrom shall bear to the assessed valuation of the part remaining. In case of a division of one or more school districts for the purpose of forming one school district within the limits of a city of the first class, it shall be the duty of the county superintendent of public instruction, the president of the board of education, and the director of the school district, to appraise and adjust all claims or assets in such a manner that each district shall bear its proportion of the indebtedness, as heretofore provided, and have its proportion of the assets of said district.

**SEC. 23. [Estimate of expenses—Taxes.]**—That the board of education shall annually, during the month of June, report to the city council an estimate of the amount of funds required for the support of the schools for the fiscal year next ensuing, the amount of funds required for the purchase of school sites, the erection and furnishing of school buildings, the payment of interest upon all bonds issued for school purposes, and the creation of a sinking fund for the payment of such indebtedness; and the city council is hereby authorized and, if approved by the city council, required to levy and collect the necessary amount the same as the other taxes; *Provided, however*, That in the cities of the first class, in case the purchase of school sites and erection of buildings shall require an expenditure exceeding five thousand dollars for any one calendar year, the question shall be submitted to a vote of the electors of the district at the time and place of any city, county, or state election. The board of education shall, previous to such election, designate in at least one daily paper published in the district where such election shall be held, the locality of the site or sites required and the cost of the building to be erected thereon.

**SEC. 24. [Limit of taxation.]**—That the aggregate school tax shall in no one year exceed one per cent. upon all the taxable property of the district.

**SEC. 25. [Taxes paid in money.]**—That all taxes collected for the benefit of the public schools shall be paid in money, and shall be subject to the order of the board of education.

**SEC. 26. [Interest—Sinking fund.]**—That the board of education is hereby authorized and required to provide before the same shall become due, for the interest on all bonds issued by the district; they shall also, immediately after the expiration of one-half of the time for which said bonds are issued, proceed to set apart, each year, for a sinking fund, a requisite amount or proportion sufficient to pay the principal of said bonds when they shall become due. All moneys set apart for said sinking fund shall be invested: *First*. In the purchase and redemption of bonds of the school district, which bonds shall be purchased in open market, in such manner as the board of education shall prescribe. *Second*. In bonds of the county in which the city is situated. *Third*. In bonds of the state of Nebraska. *Fourth*. In U. S. bonds.

**SEC. 27. [Sale of bonds.]**—That if it shall be deemed advisable by the board of education to purchase bonds issued under the provisions of this chapter, before maturity, the treasurer shall sell to the highest bidder, in open market, and in a manner prescribed by the board, such bonds or securities as shall belong to the school funds, and the proceeds thereof shall apply to the purchase of bonds herein provided for.

**SEC. 28. [Control of funds.]**—That all moneys arising from any source whatever, which under any prior act or acts of the legislature of this state, are payable to any school fund of any city of the state, or any moneys which are

required to be set apart by the treasurer of any such city for the support and maintenance of any school heretofore organized therein, under any general or special law, shall, on and after the passage of this subdivision, be payable to the treasurer of the board of education, and shall be used only for the purpose specified in this subdivision.

**SEC. 29. [Repealed act of 1869, 115, G. S. 961, and all acts amendatory thereof; act of 1873, G. S. 982; act of 1875, 208; act of 1867, 80, G. S. 484, and all acts amendatory thereto; act of 1871, 96, G. S. 488, and all acts amendatory thereof.]**

#### SUBDIVISIONS XV.—SCHOOL DISTRICT BONDS.

**SECTION 1. [School districts may issue bonds, when.]**—The district officers of any school district in Nebraska shall have power to issue the bonds of the district for the purpose of purchasing a site for, and erecting thereon a school house or school houses, and furnishing the same in such district, on the terms and conditions set forth in the succeeding sections of this act. [1879 § 1, 170.]

**SEC. 2. [Submission of question to vote.]**—No bonds shall be issued until the question has been submitted to the qualified electors of the district, and two-thirds of all the qualified electors present and voting on the question shall have declared by their votes in favor of issuing the same at an election called for the purpose, upon a notice given by the officers of the district at least twenty days prior to such election.

**SEC. 3. [Petition for submission.]**—No vote shall be ordered upon the issuance of such bonds unless a petition shall be presented to the district board, suggesting that a vote be taken for or against the issuing of such amount of bonds as may therein be asked for, to purchase a site for, or build a school house or houses, or for furnishing the necessary furniture and apparatus for the same, or for all of these purposes, which said petition shall be signed by at least one-third of the qualified voters of such district.

**SEC. 4. [Amount of bonds.]**—That no such bonds shall be issued in aggregate amount to exceed three per cent of the taxable valuation of the district for county and state purpose for the year next preceding such issue; nor shall any district issue bonds unless there are at least twelve children of school age residing within the district.

**SEC. 5. [Same.]**—The amount of bonds shall in no case exceed five hundred dollars in those districts having less than twenty-five scholars, and not less than twelve, of school age; and the amount of bonds shall not exceed one thousand dollars when the number of children of school age are twenty-five, or more, and less than fifty; and the amount of bonds shall not exceed two thousand dollars when the number of children of school age in the district are fifty or more, but less than one hundred; and the amount of bonds shall not exceed five thousand dollars when the number of children of school age in the district are one hundred or more, but less than three hundred; and in districts having three hundred or more children of school age, such amount as may be agreed upon, not to exceed three per cent. of the assessed valuation.

**SEC. 6. [Rate of interest.]**—The bonds issued under this subdivision shall draw such interest as shall be agreed upon, but not to exceed seven per cent per annum.

**SEC. 7. [Description of bonds.]**—The bonds shall specify on their face the date, amount, for what purpose issued, the time they run, and the rate of interest; shall be printed on good paper, with coupons attached for each year or half year's interest, and the amount of each year's interest shall be placed in corresponding coupons until such bonds shall become due, in a manner so as to have the last coupon fall due at the same time as the bond; said bonds and coupons thereto

attached shall be severally signed by the director, moderator and treasurer of the district board.

**SEC. 8. [Statements by school district officers.]**—It shall be the duty of the proper officers of any school district in which any bonds may be voted under the authority of any law of this state, before the issuance of such bonds, to make a written statement of all proceedings relative to the vote upon the issuance of such bonds, and the notice of the election, manner and time of giving notice, questions of submission, results of a canvass of the vote on the proposition on account of which it is proposed to issue such bonds, together with a full statement of the assessed valuation, the number of children of school age residing in the district, and total bonded indebtedness of the school district voting such bonds. Such statement shall be certified to under oath by the proper school board of the district, and be transmitted with the bonds proposed to be issued to the auditor of public accounts.

**SEC. 9. [Registration by auditor.]**—The auditor shall examine the statements and bonds so submitted to him, and if he be satisfied that such bonds have been voted in conformity to law, and are in all respects in due form, he shall record the statement and register the bonds in his office, and no such bonds shall be issued or be valid unless they shall be so registered and have endorsed thereon a certificate of said auditor and the secretary of state, showing that such bonds are issued pursuant to law, the data filed in the office of said auditor being the basis of such certificate.

**SEC. 10. [Certificate of registry—Payment.]**—Upon the registration of such bonds aforesaid, the auditor of public accounts shall certify the fact to the county clerk of the county in which the district is situated, and also to the proper officers of such school district, and whose duty it shall be to enter the same upon the proper records of such school district, and taxes for the payment of such bonds and the interest thereof shall be levied in the manner provided by section 18 of this act.

**SEC. 11. [Non-registry.]**—If the auditor of public accounts is not satisfied that such bonds have issued according to law, he shall return the same to the proper officers with a certificate to that effect.

**SEC. 12. [Effect of act on bonds heretofore issued.]**—Bonds heretofore issued under any of the provisions of any law of this state may be registered in the office of the auditor of public accounts upon compliance with the provisions of this chapter, but nothing herein contained shall affect the validity of bonds heretofore issued, and not registered under any law of this state.

**SEC. 13. [Taxation for payment—Sinking fund.]**—It shall be the duty of the board of county commissioners in each county to levy, annually, upon all the taxable property in each school district in such county, a tax sufficient to pay the interest accruing upon any bond issued by such school district, and to provide a sinking fund for the final redemption of the same, such levy to be made with the annual levy of the county, and the taxes collected with other taxes, and when collected shall be and remain in the hands of the county treasurer a specific fund for the payment of the interest upon such bonds, and for the final payment of the same at maturity. It shall be the duty of the county clerk to furnish a copy of his register to the county treasurer.

**SEC. 14. [School district defined.]**—That the phrase and expression "school district," as used in the preceding section, is hereby declared to mean, intend, and refer to the school district as it existed immediately prior to and at the time of the issuance of any bonds by said school district, including all lands and property and inhabitants comprised and contained in said school district at the time of the issuance of any bonds including all and any portions of said district subsequently separated from said district, whether by formation of a new district or by any change of boundaries of said original district.

**SEC. 15. [Excess of tax over payment due—Investment.]**—Any money remaining in the hands of any treasurer, after the payment of interest due

on any bonds which are a valid and legal obligation against the school district to which such money belongs, and the retention of a sufficient amount to pay the accruing interest upon such bonds for the current year, shall be retained as a sinking fund for the final redemption of such bonds and shall be by the treasurer, when so ordered by the school board, invested as follows, to wit: *First*. In redeeming bonds of the school district issuing the same; *Second*. In registered bonds of the county in which the district is situated; *Third*. In the bonds of the state of Nebraska; *Fourth*. In the bonds of the United States; *Provided*, That the bonds thus purchased shall in all cases be purchased at the lowest market price, after twenty days notice by publication in at least one newspaper published and in general circulation at the capital city or town of the state; the cost of which advertising, at legal rates, shall be paid out of the sinking fund for the redemption of such bonds.

**SEC. 16. [Payment, where and how made.]**—When the interest and principal, or interest only of such registered bonds are payable in New York City, or elsewhere out of the state, payment shall be therein made at the place so designated in such bond or coupon, or at the commercial agency of the state for such purposes, and in order that the funds may not be misapplied, the treasurer shall procure a draft for the amount, to be transmitted by drawing his check on some bank in this state, and both check and draft shall be so endorsed as to show upon what bond or bonds the funds shall be applied; or, at the request of the party holding or owning said bonds, payment may be made at the office of said treasurer.

**SEC. 17. [County treasurer liable.]**—The tax and funds so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for, until fully satisfied, and the treasurer shall be liable on his official bond for the faithful disbursements of all moneys so collected and received by him.

**SEC. 18. [Cancellation of bonds—Fees of county treasurer.]**—When any registered bonds shall mature the same shall be paid off by the treasurer, at the place where the same shall be payable, out of any money in his hands or under his control for that purpose, and when so paid the same shall be endorsed by the treasurer on the face thereof, "Cancelled," together with the date of such payment; and thereupon be filed with the clerk, who shall enter satisfaction of such bonds upon the record of such school district. In case said bonds are payable out of the state, an allowance of one-fourth of one per cent. shall be made to the treasurer for the expense attendant in making such payment, to be deducted from any money in his hands remaining after payment of such matured bonds.

**SEC. 19. [Acts repealed—Bonds heretofore issued.]**—That the act entitled "An act to amend an act entitled 'An act to establish a system of public instruction for the state of Nebraska,'" approved February 25, 1875; and, also, those portions of the act entitled "An act to provide for the registration of precinct, or township, and school district bonds," in conflict with this act, and all other acts and parts of acts inconsistent with this act be and the same is hereby repealed; *Provided*, That nothing in this act shall affect in any manner the validity of bonds heretofore issued.

**SEC. 20. [School district bonds—Refunding.]**—That any school district in the state of Nebraska, which has heretofore voted and issued bonds to build or furnish a school house, or for any other purpose, and which bonds or any part thereof still remain unpaid, and remain and on [are] a legal liability against such district, and bearing interest at ten per centum per annum, is hereby authorized to issue coupon bonds at a rate of interest not exceeding seven per centum per annum, to be substituted in place of, and exchanged for such bonds heretofore issued, whenever such school district can effect such substitution and exchange, at a rate not to exceed dollar for dollar. [1879 § 1, 176.]

**SEC. 21. [Recitals in new bonds.]**—The new bond so issued shall have

SEC. 20-2. "An act to provide for the funding of outstanding school district bonds." Laws 1879, 176. Took effect June 1, 1879.

recited therein the object of its issue, the title of the act under which the issue was made, stating the issue to be in pursuance thereof, and shall also state the number, date and amount of the bond or bonds for which it is substituted, and such new bond shall not be delivered until the surrender of the bond or bonds so designated. [Id. § 2.]

SEC. 22. [**How issued and paid.**—The new bonds as issued shall not require a vote of the people to authorize such issue, and they shall be paid, and the levy be made and tax collected for their payment in accordance with laws now governing the said bonds heretofore issued. [Id. § 3.]

SEC. 23. [**High school redemption bonds.**—That any school district in any city of the first class in this state be and is hereby authorized and empowered to issue its coupon bonds of such denominations as the board of education of such school district may deem best, and in an amount equal to the amount outstanding and unpaid of bonds bearing interest at the rate of ten per cent per annum, heretofore issued for the purpose of erecting a high school building, by such school district, or by any school organization or board of regents which shall have been superseded by such school district. [1879 § 1, 167.]

SEC. 24. [**Condition—Description.**—Any bonds issued under the provisions of this act shall be for the payment, by the school district issuing the same, of the sum specified therein, made payable in the city of New York, in not more than twenty years, nor less than five years from the time they are issued, with interest at a rate not exceeding seven per cent. per annum, payable semi-annually; said bonds and coupons shall be required [signed] by the president of the board of education and countersigned by its secretary; *Provided*, That such bonds may be made redeemable at any time after five years, at the option of the board of education. [Id. § 2.]

SEC. 25. [**Disposition—Avails.**—It shall be the duty of the board of education of any school district issuing bonds under the provisions of this act, to negotiate such bonds, but for not less than the par value thereof, and all the proceeds arising from the sale thereof shall be paid to the treasurer of the board of education, and shall be applied solely to the redemption and purchase of the bonds heretofore issued by such school district, or school organization superseded by it, for the purpose of erecting a high school building, and bearing interest at the rate of ten per cent. per annum; *Provided*, That none of the said bonds heretofore issued shall be redeemed or purchased for more than the face value thereof. [Id. § 3.]

SEC. 26. [**Issuance—Payment.**—The bonds issued under the provisions of this act shall not require a vote of the people to authorize their issue, and they shall be paid, and taxes shall be levied and collected for their payment in the same manner as is now provided by law for the payment of bonds heretofore issued by such school districts. [Id. § 4.]

## CHAPTER 80.—SCHOOL LANDS AND FUNDS.

### ARTICLE I.—GENERAL PROVISIONS.\*

SECTION 1. [**Board of educational lands and funds.**—That the board of commissioners provided for in section one of article VIII of the constitution, consisting of the governor, secretary of state, treasurer, attorney general, and the commissioner of public lands and buildings, shall cause all school, university and agricultural college lands now owned by, or the title to which may hereafter vest in the state, to be registered, sold and leased, and the funds arising from the sale thereof to be invested in the manner provided by this act. [1877 § 1, 174.]

SECS. 23-26. "An act to authorize any school district in any city of the first class to issue bonds in certain cases." Laws 1879, 167. Took effect February 26, 1879.

\*ART. I. "An act to provide for the registry, sale, leasing and general management of all lands and funds set apart for educational purposes, and for the investment of funds arising from the sale of such lands." Laws 1877, 174. Took effect Feb. 19, 1877. This act supersedes Laws 1867, 37. G. S. 990

**SEC. 2. [Records delivered to commissioner.]**—All records, books, and papers, appertaining to any of the lands described in the preceding section, now in the possession of any state or county officer, and all records, leases, notes given for the unpaid principal of school lands, or any other books and papers appertaining thereto, now in the possession or under the control of any county officer or commissioners in any county, shall forthwith be turned over and delivered to the commissioner of public lands and buildings, and be by him preserved under the direction of the board.

**SEC. 3. [Abstracts of educational lands.]**—The commissioner of public lands and buildings shall, under the direction of the board, cause suitable abstracts to be made of all the lands owned by the state for educational purposes, and entered in suitable and well bound books. Such abstracts shall show in proper columns and pages the county in which each tract is situated, the section, part of section, township and range; whether timber or prairie; whether improved or unimproved, the appraised value per acre, the value of improvements and total value; the date of sale, name of purchaser, price per acre, amount paid in cash, amount unpaid and when due, amount of annual interest, names of sureties on notes, date of lease and when recorded, names of lessee, length of lease, amount of annual rental, date of patent and when recorded, and such other columns as may be necessary to show a full and complete abstract of the condition of each tract of land from the time title was acquired by the state until final payment by the purchasers and the issuance of a deed for the land.

**SEC. 4. [University and agricultural college lands—Abstracts—Appraisal.]**—When the title to the university and agricultural college lands shall have been perfected, it shall be the duty of said board to cause abstracts thereof to be made by counties, on blank forms prepared for that purpose, and shall forward the same to each county clerk, who shall forthwith appoint three persons, none of whom shall reside upon the land shown by such abstract, who shall subscribe to an oath before a proper officer, to carefully appraise the prairie lands in tracts not to exceed forty acres each, and the timber lands in tracts not exceeding ten acres each, and to appraise any improvements thereon, and to make due and prompt return to the county clerk. Upon the completion of such appraisal the county clerk shall return the abstract thereof to the commissioner of public lands and buildings, and the appraised value of such lands shall be entered upon the abstract provided for in the preceding section.

**SEC. 5. [Re-appraisal of lands.]**—The said board may, when they deem it to the best interests of the state, cause any unsold lands, the sale and leasing of which is regulated by this act, to be re-appraised, and the re-appraised value thereof entered upon the abstract hereinbefore provided for.

**SEC. 6. [Indemnity school land—Appraisal.]**—Whenever the title to any lands selected in lieu of sections sixteen (16) and thirty-six (36), of school lands has been confirmed, the same shall be appraised in the manner provided in section four (4) of this act.

**SEC. 7. [Sale of educational lands.]**—In all counties where the appraised value of any portion of unsold lands shall exceed seven (7) dollars per acre, the commissioner of public lands and buildings shall, either in person or by agent, attend at such times as the board may direct, but not more than once in any one year, and offer at public auction all the unsold lands, except such as have been leased, to the highest bidder; *Provided*, That the agent herein provided for shall be the county treasurer of the county in which such lands shall be situated; *Provided*, That notice of such sale, and of the time when, and place where the same will be held, shall be given by publication in some newspaper published in the county, or in case no newspaper is published in the county, then in some newspaper of general circulation therein; *Provided further*, That no lands shall be sold for less than the appraised value thereof, nor offered for sale, or sold for less than seven (7) dollars per acre in addition to the improvements on the land.

**SEC. 8. [Terms of payment—Notes.]**—Payments for lands sold under

the provisions of this act shall be made as follows: For prairie lands at least one-tenth of the price cash in hand, or such other sum more than one-tenth as the purchaser may desire; other lands, one-half cash in hand; or cash down for either at the option of the purchaser. When full price is not paid as above, the purchaser shall give a promissory note for the remainder, to mature in twenty years after date, bearing interest at the rate of six per cent. per annum, payable annually in advance; the first payment of interest being computed to the first day of January next after the date of the note; *Provided*, That when such note is given for timber land, it shall be endorsed by two freeholders of the county, to be approved by the commissioner of public lands and buildings; *And provided also*, That nothing in this act shall be so construed as to prevent purchasers from making full payment at any time during the year by computing the interest to the first day of January following such payment.

**SEC. 9. [Payments, when made.]**—Payments made at such sales shall be made to the county treasurer, who shall deliver to the person making such payment a receipt therefor, and any person making full payment shall, upon the presentation of his receipts therefor to the board, be entitled to receive a deed from the state. The commissioner or his agent shall report in writing to the auditor of public accounts the amount so paid to the county treasury, and payments so made shall at once be turned over by said county treasurer to the state treasurer. Notes given for deferred payments shall be kept by the land commissioner, and all payments of interest made shall be properly endorsed thereon, and when final payment is made, and a deed therefor issued by the state, the said notes shall be delivered up to the purchaser or his assigns.

**SEC. 10. [Collection of interest—Receipts.]**—The commissioner of public lands and buildings shall on or before the first day of December in each year, make out and transmit to each county treasurer, a statement showing the description of each tract of land, which the records of his office show have been sold in said county, with the name of the purchaser and the amount due as interest thereon on the first day of January next. The county treasurer shall keep said statement in his office and use diligence to collect the same. When payments are made he shall deliver duplicate receipts therefor to the person paying the same, one of which shall be filed in the office of the county clerk, and by him transmitted to the auditor of public accounts, and the other shall be countersigned by said clerk and returned to the party, and no such receipt shall be held valid unless countersigned by said clerk. The said county treasurer shall, on or before the first day of May following, return said statement with a note of all payments made thereon, and all lands upon which interest remains unpaid shall be forfeited to the state, and offered for sale at the next public sale of lands referred to in this act, in that county; *Provided*, That the purchaser or his assignee, may redeem said land upon payment of the interest due thereon, and interest thereon at the rate of six per cent. per annum from said first day of January until the time of such redemption; *Provided*, Such lands have not been sold to other persons. And any lands so redeemed shall not be re-sold unless again forfeited as herein provided.

**SEC. 11. [Time of payment extended.]**—In all cases of school lands sold prior to July 1, 1876, and any forfeiture shall have occurred by reason of non-payment of principal, the time of payment thereon shall be extended for the term of ten (10) years from and after the aforesaid date; *Provided*, The purchaser of such lands shall make application for such extension on or before the first day of June, A. D. 1877, and pay all interest that may be due thereon at such date; and any party who has heretofore bought school lands and executed a note in payment thereof, and has neglected to pay the deferred payments or interest due thereon, shall, upon the surrender of said lands to the state, with all improvements thereon, be entitled to have said note cancelled and given up.

**SEC. 12. [Value of improvements deducted.]**—Any person purchasing lands upon which they have made improvements shall be allowed to deduct

the appraised value of such improvements from the amount bid for said land, and in the event that any person purchase land upon which any other person has improvements the purchaser shall pay the full price of said land to the county treasurer, and the treasurer shall pay the appraised value of the improvements in cash to the person owning the same; and any person having made improvements upon any land sold to another, may at any time before receiving the appraised value thereof from the county treasurer, and within six months from the day of sale, remove such improvements from said land, and upon such removal the said treasurer shall return to the purchaser the appraised value of the improvements.

**SEC. 13. [Certificate of purchase.]**—Upon a sale of lands as herein provided, the commissioner or his agents shall issue a certificate of purchase, with the seal of his office thereto attached, showing the land purchased, the amount paid, the amount due, the time when interest and balance of the principal is due, and upon the payment of such amounts according to law, he will be entitled to a deed of said land.

**SEC. 14. [Payments endorsed on certificate.]**—Whenever payments of interest are made to the county treasurer as hereinbefore provided, he shall indorse the amount paid upon such certificate of purchase.

**SEC. 15. [Deed—Record.]**—When the board becomes satisfied that full payment has been made upon any tract of land heretofore or hereafter sold, the governor shall, under the great seal of the state, issue a deed therefor to the purchaser or his assignee, and all deeds so issued shall be attested by the commissioner of public lands and buildings, and a record thereof kept in his office.

**SEC. 16. [Payments of principal—Receipts.]**—Any party purchasing lands under the provisions of this act, may at any time, pay any portion of the principal due thereon, to the county treasurer of the county in which the land is situated, who shall give the same receipts as he is required to give when payment of interest is made, and the county clerk shall transmit one of said receipts to the auditor of public accounts, who shall notify in writing the board of such payments, and the commissioner shall endorse his name upon such notifications, and return the same to the auditor, who shall file and preserve the same in his office, and the commissioner of public lands and buildings shall endorse the amount of principal so paid upon the note in his possession.

**SEC. 17. [Leasing of educational lands.]**—Whenever any of the lands herein provided for have been offered for sale and not sold for want of bidders, the said board may lease the same on the following conditions: All persons desiring to lease such lands shall file their sealed proposal for the leasing of the same, under the terms and conditions hereinafter set forth, in the office of the county treasurer of the county in which such lands are situated. The proposal shall describe the land desired to be leased by section, township, and range, and set forth the highest rate per cent. on the appraised value of the land which the bidder will pay; *Provided*, That no bid or proposal offering less than six per cent. per annum on the appraised value of such lands shall be entertained; and such proposals shall be transmitted by the county treasurer to the commissioner of public lands and buildings, and by him opened at the next meeting of the board, who shall examine and approve or reject the same, and if approved execute a lease for the same to such bidder at the price named in such proposal; *Provided*, If any other bid for the same land shall be presented to said board they shall execute the lease to the highest bidder; *Provided*, That no land shall hereafter be leased at a less rate than six per cent. per annum on the appraised value thereof, and that the said rate of six per cent. be and hereby is declared to be the minimum rate at which such lands shall be leased. [Amended 1879, 110.]

**SEC. 18. [Lease—Award—Execution.]**—When the award of a lease has been given as aforesaid, the said commissioner shall sign a lease in duplicate and transmit the same to the county clerk, which lease shall be signed by the lessee; one copy shall be retained by him and the other returned by the county clerk to the said commissioner. The county clerk shall deliver said lease to the lessee



upon the presentation of the receipt of the county treasurer for the amount of money due on such lease as the first payment, which receipt shall be transmitted to the auditor of public accounts. If the applicant for a lease fails to sign the same, and make said first payment within thirty days after the receipt thereof by the county clerk, the leases shall be returned to the commissioner, and be by him cancelled.

**SEC. 19. [Payment of rents—Covenants—Appraisal—Purchase by lessee.]**—The first payment shall be computed to the first day of January or July, as the case may be, next ensuing the date of executing the lease, and such lease shall contain a covenant or contract of the lease that he or she will promptly pay the rental or interest semi-annually, in advance; that no waste shall be committed on the land, and that the premises shall be surrendered at the expiration of twenty-five years from the first day of January next ensuing after the date of the lease, or sooner with the consent of the board herein referred to; that the lessee will pay for the use of said land at the annual rate of not less than six per cent. per annum upon the appraised value thereof; that at the expiration of five years from the date of the lease, and every five years thereafter, the land shall be appraised by three persons, one of whom shall be appointed by the county clerk, one by the lessee, and a third by the other two, and that the valuation made by such appraisers shall (provided it be not less than the former appraisement) be the basis for the rental for the five years succeeding the first day of January; *Provided*, That the appraisement shall not include improvements made by the lessee. Any lessee of school or university lands may at any time, not oftener than once in any one year, apply in writing to the county treasurer of the county in which the land is situated, to have such land appraised for the purpose of sale. On the receipt of such application, and the payment of six dollars by such lessee, the county treasurer, together with the county clerk and county judge, shall appoint three disinterested freeholders of such county, whose duty it shall be to appraise the lands designated at their just and full value, exclusive of improvements, and to make a return of such appraisement within twenty days after their appointment. Such appraisement shall be made under oath. Each appraiser shall receive the sum of two dollars for his services, to be paid by the county treasurer out of the money paid by the applicant as aforesaid. Within ten days after the appraisement aforesaid it shall be the duty of such county treasurer to forward the same, together with the written application aforesaid, to the office of the commissioner of public lands and buildings, and such applicant may, at his option, at any time within sixty days after such application, make a written surrender of his lease, which shall be filed in the office of the commissioner of public lands and buildings, and thereupon said lessee may purchase said lands at their appraised value, but at not less than seven dollars per acre, and a contract of such sale shall be executed and recorded in all respects in the same manner, and shall have the same force as in case of the public sale of other lands under the provisions of this act, but in such case the contract shall recite the fact that such sale is made at private sale to a lessee under the provisions of this act. [Amended 1879, 111.]

**SEC. 20. [Violations of covenants—Forfeiture.]**—In case of the violation of any of the covenants in the contract furnished by the lessee or purchaser of such land, by the commission of waste upon the land, by removal of any improvements on the land without the consent of the board, or by the commission or omission of any act constituting a breach of the contract or covenants contained in said lease or contract of sale; or, when the records of the commissioner of public lands and buildings shall show and the board shall be satisfied that two or more lessees or purchasers in any county are in default of payments due upon their leases or sales, such leases or sales may be set aside by the judge of the district court of the district in which the county is located in which said land is situated. When the board may order an action to be commenced in any county to set aside the contracts of lessees or purchasers of lands, it shall be the duty of the commissioner of public lands and buildings to prepare a list of the lands em-

braced in such contracts so proposed to be set aside, giving the names of the lessees or purchasers, as the case may be, the number of acres, when delinquent, and the amount of such delinquency, and such other information as may be necessary to successfully prosecute said action, which said list and other information, if any, shall be by him delivered to the attorney general of the state, and it shall be the duty of the attorney general to forthwith commence an action in the district court of the county in which the lands may be situated, in the name of the state of Nebraska, against such delinquents, and it shall be lawful to include in one action as many defendants as may be deemed necessary, who have made default as aforesaid; *Provided*, That nothing herein contained shall debar any of said defendants from maintaining a separate defense in his or her behalf. The service in said action shall be deemed sufficient when it shall appear to the judge of said court that notice by publication in some newspaper published within the county where such land is situated shall have been given for at least sixty days prior to the first day of the term of said court. [Amended Mar. 8. Took effect June 1, 1881.]

**SEC. 21. [Waste—Trespass—Penalty.]**—If any person shall commit waste or trespass, or other injury, upon any of the lands herein referred to, or upon any of the improvements thereon, the persons so offending shall, on conviction thereof, be fined in a sum not less than twenty-five dollars nor exceeding one thousand dollars.

**SEC. 22. [Destroying timber—Penalty.]**—If any purchaser of timber land shall, before receiving his title in fee simple therefor, cut or destroy any timber on said land, any further than may be actually necessary for the building and repair of fences, and for fuel for family of the occupant, he or she shall be liable, in a civil action, for the recovery of twice the amount of damages done to the land.

**SEC. 23. [Offenders to be prosecuted.]**—All civil officers, upon information on oath, or of their own knowledge, shall cause any person committing any of the offenses mentioned in section twenty-one of this act, to be brought before them by a like process as in criminal cases, and to enter into recognizance for his appearance at the district court of the state, to be held in the county where said land is located, on the first day of the next term thereof, and in default of such recognizance they shall commit such person to the jail of the county.

**SEC. 24. [Judges charge to grand jury.]**—The judges of the district court shall give the twenty-first section of this act in special charge to grand jury at each term, who are required to specially inquire into and make presentment of all offenses committed against the provisions of the same.

**SEC. 25. [Fines—Penalties—Payment.]**—All fines and penalties accruing under the provisions of this act shall be paid into the county treasury by the officer collecting the same, who shall take duplicate receipts therefor, one of which he shall file in the office of the county clerk, and such funds shall be apportioned among the schools of the county where the same accrued, on the same basis as other moneys applicable to the support of schools, are required by law to be apportioned.

**SEC. 26. [Principal of moneys, how held.]**—All moneys received as advance or full payment by the purchaser of lands heretofore sold, or hereafter sold under the provisions of this act, together with all forfeitures arising under this act, shall be paid by the officers receiving said moneys to the treasurer of the state, specifying whether said money is for the common school or university, or agricultural college, and triplicate receipts shall be given for said moneys, one of which shall be filed with the commissioner of public lands and buildings, one with the auditor of public accounts, and the other retained by the officer paying the same. Such money shall be held as the principal of the university, agricultural college, or permanent school fund, as the case may be.

**SEC. 27. [Commissioner's statement to superintendent.]**—The commissioner of public lands and buildings shall, annually, on the first day of

January, present to the state superintendent of public instruction, a statement of the whole number of acres of school, university and agricultural college lands which were possessed by the state at the beginning of his term of office, or on the first day of January preceding, the number of acres sold or leased, the amount of principal of such funds, and the receipts from interest and forfeitures during the year

**SEC. 28. [Fees of officers, etc.]**—The appraisers of any land under this act shall be allowed the sum of three dollars per day for their services. The publisher of any advertisement for the sale of lands shall be allowed the fees fixed by law for publishing legal advertisements. The commissioner of public lands and buildings shall be reimbursed his actual traveling expenses incurred, not exceeding five cents per mile, in making sales of lands. All accounts for any such services shall be examined and approved and paid as provided by law.

**SEC. 29. [Meetings of board.]**—The board for the sale, management and lease of lands under the provisions of this act shall meet on the second Tuesday of each month, the governor shall be chairman, and the secretary of state ex-officio secretary of the board. They shall keep a record of all proceedings and orders made by them. No order shall be made except upon the concurrence of at least three members of said board.

**SEC. 30. [Clerical force.]**—The said board shall have authority to employ such a number of clerks as may be necessary to keep the records herein provided for, but the aggregate salaries of such clerks, including that of deputy to the commissioner, shall not exceed in any one year the sum of twenty-five hundred dollars.

**SEC. 31. [Investment of funds.]**—The said board shall at their meetings make the necessary orders for the investment of the principal of the funds derived from the sale of said lands, then in the treasury, but none of said funds shall be invested or loaned except on United States or state securities.

**SEC. 32. [Act to apply to sales heretofore made.]**—The provisions of this act in relation to payments of interest upon the purchase money of any lands sold as herein provided shall apply to all future payments of interest upon sales of school lands heretofore made in this state, and the said board shall, in their entries made under section three of this act, compute the interest due accordingly.

**SEC. 33. [Subdivision of school section into lots—Sale.]**—Any portion of the lands of this state governed by this act adjoining the site of any city or town may be subdivided into lots and sold as herein provided. The board being satisfied that by a division of any such tract into lots, the sale of the same can be made for a greater amount than if sold in tracts of forty acres, as hereinbefore provided, shall have authority to employ the necessary surveyors, and cause such tracts to be subdivided into lots and tracts of such size as they may determine, and a plat of the same shall be made and filed for record, in the office of the county clerk. Tracts of land so subdivided shall not be leased, but each lot situated therein shall be sold at public auction at such time as the board shall direct, and sold as other lands are sold; such lots shall be appraised by three appraisers to be appointed by the board, none of whom shall be occupants of any portion of the lands so to be sold. The commissioner of public lands and buildings shall give thirty days notice of such sale, and publish the same in three newspapers of general circulation throughout the state, one of which shall be published in that county, and if no newspaper is published therein, notices of such sale shall be posted in five of the most public places in the county. Each notice shall contain a list of the lots to be sold, and the appraised value of each. The sale of such lots shall take place on the day appointed, under the direction of the commissioner, and the same shall be sold to the highest bidder, but in no case for less than appraised value. Lots remaining unsold shall be again offered for sale at public auction, at such time as the board shall direct; *Provided*, That the said commissioner may adjourn the sales from day to day until all the lots be offered.

**Sec. 34. [Same—Expenses, how paid.]**—The expenses attending such sales shall be paid as other expenses of sales of school lands, as hereinbefore provided.

**Sec. 35. [Accounts with county treasurers.]**—The auditor of public accounts shall charge each of the county treasurers in the state the amount of money received as principal and interest, separately, from the sale or lease of lands in their respective counties, as shown by the receipt forwarded by the clerks of the several counties, and upon the payment of the same to the state treasurer, and the presentation of the state treasurer's receipt, shall credit the several county treasurers with the amount of the same.

**Sec. 36. [Taxation of lands.]**—School lands sold under the provisions of this act, or such as have been heretofore sold, shall not be taxable until the right to a deed shall have become absolute, except for the value of the interest of such purchasers, which interest shall be determined by the amount paid and invested in improvements on such lands; *Provided*, That in all sales made prior to the first sales made in the year 1872, the purchasers shall be reimbursed by the county for all state and county taxes paid on such lands, if the county commissioners shall, upon due proof made, be satisfied that at the time of such sales it was understood by the purchasers upon representations made at such sales by the county treasurer and county commissioners that such lands would not be taxable until the title to said lands should be due from the state under the contract of purchase; *Provided*, The county commissioners of any county shall not reimburse any such purchaser for any tax upon the value of the interest which he had in such land at the time the said tax was levied.

**Sec. 37. [Refunding taxes.]**—Said county commissioners shall issue a warrant upon the general fund of the county treasurer, for the amount of taxes so refunded, and the county treasurer, at each settlement with the auditor of public accounts, shall render a statement of the amounts of state taxes which have been so refunded in accordance with the provisions of this act, and upon making settlement with said auditor therefor, shall receive a warrant upon the state treasurer for said amount, which shall be paid by him into the county treasury.

## ARTICLE II.—SCHOOL FUNDS.

**SECTION 1. [Unclaimed fees and costs.]**—That all unclaimed fees and costs which have been paid and not demanded for two years, shall be paid in by the justice or clerk of any court under whose control such unclaimed fees and costs may be, to the school fund of the respective county where such moneys belong. [1869 § 1, 158.]

**Sec. 2. [Fines and penalties.]**—That all fines, penalties, and forfeitures not otherwise specifically appropriated, shall be paid in to augment the common school fund of the county where such fines, penalties, and forfeitures properly belong. [Id. § 2.]

**Sec. 3. [Escheats.]**—That all property, real or personal, which may now belong to this state by escheat, or that may hereafter escheat to this state for want of owners, shall be managed by the governor and the superintendent of public instruction, and such property and the proceeds thereof shall be placed in the school fund of the state. [Id. § 3.]

**Sec. 4. [Five per cent. fund.]**—That all moneys now in the state treasury, or that may hereafter be received from the United States, on account of the five per cent. fund on cash sales, shall be placed to the credit of the permanent school fund of the state. [G. S. § 1, 999.]

**Sec. 5. [Duty of governor.]**—That the governor of the state be, and he

Sec. 36. See sec. 3, chap. 77, p. 400, and Art. III, this chapter.

SECS. 1-3. "An act to increase the school fund in Nebraska by penalties, forfeitures, fines, unclaimed fees and estates." Laws 1869, 158. G. S. 1000. Took effect February 15, 1869. See Const. Sec. 3, Art. VIII, 5 Neb. 206, Art. IX, Chapter 83, post.

Sec. 4. "An act to place moneys received from the United States, known as five per cent. funds, to the credit of the permanent school fund of the state." G. S. 999. Took effect February 18, 1873.

is hereby empowered and directed to receive from the United States, all moneys that may be due or hereafter become due to the state, and it shall be his duty to deposit the same without delay in the treasury of the state, taking the treasurer's receipt thereof. [Id. § 2.]

**SEC. 6. [Permanent school fund securities—Collection.]**—That the state treasurer is hereby authorized and directed to institute suit on behalf of the state of Nebraska in the proper courts of the several counties for the foreclosure and collection of any and all securities held by the permanent school fund of this state, such suits to be prosecuted in the name of the state, against any and all persons indebted to said fund upon such securities, and the judgments recovered and the moneys collected thereon shall belong to said school fund. [1877 § 1, 208.]

**SEC. 7. [Duties of attorney general.]**—That the attorney general is hereby required, upon request of said state treasurer, to perform all necessary legal labor in the preparation and prosecution of any suit necessary to be brought in order to compel the payment of any of such securities or the interest due, or to become due thereon. [Id. § 2.]

**SEC. 8. [Cancellation.]**—That upon the payment if [of] any mortgage or other security held by said school fund, the state treasurer is hereby authorized and required to discharge and cancel the same of record in the manner required by law. [Id. § 3.]

**SEC. 9. [Settlement.]**—If the governor, treasurer, and auditor of public accounts shall deem it for the best interests of the state to take a conveyance of the land mortgaged, to secure any loan of the permanent school fund heretofore made, or other land in lieu thereof, then and in that case, the treasurer is hereby authorized to cancel and discharge of record any mortgage heretofore given to the state for the benefit of the permanent school fund when such conveyance of such lands as the said governor, treasurer and auditor of public accounts may require to be made, shall have been duly executed and delivered to the state for the benefit of the permanent school fund. [Id. § 4.]

**SEC. 10. [Avails of judgments transferred to school fund.]**—That all moneys now in the treasury of the state arising from collections on judgments in favor of the state, as well as all moneys which shall hereafter be collected on such judgments, shall be transferred and paid into the permanent school fund and become a part thereof. [1879 § 1, 177.]

#### ARTICLE III.—REFUNDING TAXES.

**SECTION 1. [To whom paid.]**—That moneys heretofore received by the county treasurer of the several counties within the state of Nebraska, on account of taxes levied on lands, the title to which vests in the state of Nebraska, from persons holding said lands under contract of sale, or lease, shall be repaid without interest to persons who have paid the same, their heirs, executors, or assigns. [1879 § 1, 149.]

**SEC. 2. [Payment.]**—That said moneys shall be repaid by the respective county treasurers, on orders in that behalf, made by the county commissioners of the respective counties.

**SEC. 3. [Receipt.]**—That no order shall be made by the county commissioners of any county, for the repayment of money paid as aforesaid into the treasury, except upon the production of a receipt from the treasurer of the [county] acknowledging the payment of money as taxes as aforesaid, on lands owned by the state of Nebraska.

SECS. 6-9. "An act to provide for the foreclosure and collection of the securities held by the permanent school fund of Nebraska." Laws 1877, 208. Took effect June 1, 1877.

SEC. 10. "An act to provide for the transfer of moneys received by the treasurer on judgments in favor of the state to the permanent school fund." Laws 1879, 177. Took effect June 1, 1879.

ART. III. "An act to provide for the repayment of moneys paid as taxes on lands, the title to which vests in the state, by persons holding such lands under contract of sale, or by lease," with a preamble as follows:

"WHEREAS, In the different counties of the state of Nebraska, there are many persons holding school lands under contract of sale, or under lease from the state of Nebraska, the title to said land being now vested in the state; and WHEREAS, Said school lands have not been, and are not now taxable for any purpose whatever, therefore, etc." Laws 1879, 149. Took effect Feb. 20, 1879.

**SEC. 4. [Cancelling of taxes.]**—The county commissioner[s] of any county where school lands have been wrongfully taxed and the taxes have not yet been paid, shall order the county treasurer to cancel the same.

ARTICLE IV.—MISCELLANEOUS PROVISIONS.

**SECTION 1. [Purchaser may surrender portion of lands.]**—That any person who has purchased any of the school lands of this state, who may desire to surrender portions, and retain other portions, not less than forty acres of the same, shall, upon executing a release in writing to the state of Nebraska for such lands surrendered, be credited by the county treasurer of the county upon the portion of land retained by such person, the amount of money paid upon such lands so surrendered which shall exceed six per cent. per annum of the unpaid portion of the purchase price of said lands. [1879 § 2, 81.]

**SEC. 2. [Bond when sale of school land is enjoined.]**—That hereafter, when any person, or persons, shall institute proceeding to prevent the sale of any of the school lands of this state, the judge, or other person, before whom the proceedings shall be commenced, shall require the person instituting such proceeding to enter into a written undertaking with one or more good and sufficient sureties thereto, to the state of Nebraska, in a sum equal at least to fifteen per centum of the value of the lands, the sale of which is sought to be prevented, conditioned, that the plaintiff or person instituting such proceedings, shall pay all costs and damages which may accrue, if it shall finally be determined that such proceedings ought not to have been instituted. [1875 § 1, 128.]

**SEC. 3. [Time of payment extended.]**—That upon the full payment of all the interest and taxes due thereon, the principal of all notes given in payment for school lands, be, and the same is hereby extended to the first day of January, 1890; *Provided*, That upon all lands heretofore sold, the purchaser or his assigns, shall make satisfactory proof to the county clerk of the county within which the land is situated, that permanent improvements have been made upon said lands before such extension shall be granted; *Provided further*, That nothing in this act shall be construed to prevent the purchaser or his assigns, from making full payment of such notes at any time by computing the interest to the first day of January following such payment. [1877 § 1, 210.]

**SEC. 4. [Power of county commissioners.]**—It shall be the duty of the county commissioners, upon application being made by the purchaser, or his assigns, showing that the provisions of section one of this act has been complied with, to extend the time of payment of the principal of such notes to the time specified in section one of this act. [Id. § 2.]

**SEC. 5. The provisions of this act shall extend to and include all sales of school land hereafter made.** [Id. § 3.]

**SEC. 6. [Parties living on land selected in lieu of sections 16 and 36.]**—Any person or persons who shall have resided continuously for a term of five years on lands selected in lieu of sections 16 and 36 for common school purposes, shall when the state acquires title thereto, have the privilege of purchasing the same, on the same terms as other school lands are purchased from the state; *Provided*, That such lands shall be appraised under direction of the county commissioners, at not less than seven dollars per acre; *Provided further*, That such appraisal shall not include any improvements placed on said lands by the person so purchasing the same. [1875 § 1, 123.]

SEC. 1. "An act to amend an act entitled 'an act for the relief of purchasers of school lands,' approved February 19, 1877." Laws 1879, 80. Took effect June 1, 1879.

SEC. 2. "An act to provide the measure of damages in cases where proceedings are instituted to prevent the sale of school lands." Laws 1875, 123. Took effect Feb. 25, 1875.

SECS. 3-5. "An act to extend the time of payment of notes given in payment for school lands." Laws 1877, 210. This act took effect June 1, 1877 subsequent to sec. 11, p. 481.

SEC. 6. "An act authorizing parties living on school lands selected in lieu of sections 16 and 36 to purchase the same when the state acquires title." Laws 1875, 123. Took effect Feb. 25, 1875.

## CHAPTER 81.—SEALS.\*

**SECTION 1. [Use of private seals abolished.]**—The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments and contracts in writing, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its equity or legality in any respect. [R. S. 376. G. S. 1001.]

**SEC. 2. [Instruments heretofore made without seal valid.]**—All deeds, mortgages, or other instruments in writing, for the conveyance or encumbrance of real estate, or any interest therein, which have heretofore been executed, without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid in all courts of law and equity in this state and elsewhere.

## CHAPTER 82.—SEAT OF GOVERNMENT.†

**SECTION 1. [Commissioners.]**—That the governor, secretary of state, and the auditor, be, and they are hereby appointed commissioners for the purpose of locating the seat of government and the public buildings of the state of Nebraska.

**SEC. 2. [Provided for bond of commissioners.]**

**SEC. 3. [Selection—Name.]**—On or before the fifteenth day of July, A. D. 1867, the commissioners, or a majority of them, shall, upon actual view, select from the lands belonging to the state, within the following limits, to wit: The county of Seward, the south half of the counties of Saunders and Butler, and that portion of the county of Lancaster lying north of the south line of township nine, a suitable site of not less than six hundred and forty acres, lying in one body for a town, due regard being had to its accessibility from all portions of the state, and its general fitness for a capital. They shall then appoint a suitable person as surveyor, and such other assistants as may be necessary, who shall take and subscribe an oath similar to the one taken by the commissioners. They shall immediately survey, lay off, and stake out the said tract of land into lots, blocks, streets, and alleys, and public squares, or reservations for public buildings, which said town, when so laid out, and surveyed, shall be named and known as Lincoln, and the same is hereby declared to be the permanent seat of government of the state of Nebraska, at which all of the public offices of the state shall be kept, and at which all the sessions of the legislature shall hereafter be held.

**SECS. 4-10. [Provided for sale of lots, expenses of commissioners, and erection of capitol.]**

**SEC. 11. [University—Agricultural college—Location.]**—The state university and state agricultural college shall be united as one educational institution, and shall be located upon a reservation selected by said commissioners, in said "Lincoln," and the necessary buildings shall be erected thereon as soon as funds can be secured by the sale of lands donated to the state for that purpose, or from other sources.

**SEC. 12. [Penitentiary—Location.]**—The penitentiary of the state shall be located upon a reservation selected by the said commissioners in the said "Lincoln," or upon lands belonging to the state, and adjacent to said town, of "Lincoln," and the necessary building shall be erected as soon as funds can be secured.

**SEC. 13. [Officers to move to Lincoln.]**—As soon as the capitol building provided for in this act, is erected and completed, it shall be the duty of the governor to issue his proclamation announcing said fact, and thereupon it shall be the duty of all the state officers whose offices are properly kept at the capitol, to remove, within three months, their several offices, together with the public property, archives, records, books, and papers to said "Lincoln," and all sessions of the legislature shall thereafter be convened at the same place.

**SEC. 14. [Provided for report to legislature.]**

\*NOTE.—Chapter XLIX, R. S. 376. Chapter 71, G. S. 1001.

†NOTE.—"An act to provide for the location of the seat of government." Laws 1867, 52. G. S. 1002. Took effect June 24, 1877. NOTE.—Also that special acts concerning the erection of public buildings, capitol, insane asylum, etc., are omitted from this volume. See Const. p. 38.

## CHAPTER 83.—STATE AND STATE OFFICERS.

## ARTICLE I.—GOVERNOR.

**SECTION 1. [Powers.]**—The governor is hereby constituted the legal custodian of all the property of the state, not specially entrusted to other officers by law, and he is hereby authorized and empowered to take summary possession of such property of the state, without any process of law, and to adopt such measures as he may deem proper to preserve it from injury or deterioration. [1867 § 1, 100.]

**SEC. 2. [Report of executive officers.]**—It shall be the duty of the several officers of the executive department to make a written report to the governor of the state of the public business entrusted to their charge, whenever required by him so to do. [Id. § 2.]

**SEC. 3. [Commissions.]**—All commissions to civil officers in this state, shall be issued and signed by the governor, and countersigned by the secretary of state, and a record thereof kept in the office of the secretary of state. [Id. § 3.]

**SEC. 4. [Thanksgiving day.]**—The governor shall by proclamation, set apart one day in each year as a day of solemn and public thanksgiving to Almighty God, for his blessings to us as a state and a nation, and no business shall be transacted on that day at any departments of state. [Id. § 6.]

**SEC. 5. [Private secretary.]**—The governor shall appoint a private secretary to serve during the continuance of his term of office, who shall receive a salary of fifteen hundred dollars per annum, payable in the same manner as the salaries of state officers. [Id. § 7. Amended 1879, 108.]

**SEC. 6. [Insurance on public buildings.]**—That the governor be and is hereby authorized and empowered to insure the public buildings and other property belonging to the state, liable to destruction or injury by fire, with some good and responsible insurance company or companies, for the benefit of and in the name of the state. [1869 § 1, 87.]

**SEC. 7. [Same.]**—That the governor shall deposit the insurance policies, taken out in accordance with the provisions of the foregoing section, with the treasurer of the state, and shall certify to the auditor the amount of the premiums and the date they become due, and the auditor shall draw his warrant upon the treasurer for the respective amounts of said premiums from time to time as they shall be due, in favor of the proper officer or agent of said insurance company or companies. [Id. § 2.]

**SEC. 8. [Janitor.]**—The governor is hereby authorized and empowered to employ some suitable person as janitor of the capitol building, who shall receive a salary of six hundred dollars per annum, payable quarterly, in like manner as the salaries of state officers, and whose duty shall be to take care of and keep in good order the said capitol building, and the grounds belonging thereto. [Id. § 3.]

## ARTICLE II.—SECRETARY OF STATE.

**SECTION 1. [Custodian of public records.]**—All public acts, laws, and resolutions passed by the legislature of the state shall be carefully deposited in the office of the secretary of state, and the secretary of state is charged with the safe keeping of said office and all laws, acts, resolutions, bonds, papers, and records, which now are or shall hereafter be deposited therein. He shall not permit any original rolls, papers, or public documents filed in his office, to be taken out of it unless called for by a resolution of either or both houses of the legislature, or for the examination by the executive. [1877 § 3, 195.]

**SEC. 2. [Legislative documents.]**—The secretary of the senate and the

SECS. 1-5. "An act prescribing and defining the powers and duties of the governor of the state," (Laws 1867, 100,) except Secs. 4 and 5. which were superseded by Secs. 10, 11, and 13, Art. V. Const. The act took effect June 24, 1867.

SECS. 6-8. "An act to provide for the care of the capitol building and other state property." Laws 1869, 87. G. S. 1047. Took effect Feb. 15, 1869.

ART. II. "An act to define the duties of secretary of state." Laws 1877, 195. Took effect June 1, 1877. Secs. 1-2 of original act repealed 1881, 102, ante p. 75.



clerk of the house of representatives, at the close of each session of the legislature shall deliver to the secretary of state all books, bills, documents, and papers in the possession of either branch of the legislature, correctly labeled, folded, and classified, according to the subject matter of such documents, respectively; and the secretary of state is hereby required to preserve the same in his office. [Id. § 4.]

**SEC. 3. [Fees of office].**—There shall be paid to the secretary of state the following fees: For a certificate without seal, fifty cents. For each commission to any officer or other person, except military commissions, one dollar. For copies of exemplification of records, with seal, for each one hundred words, ten (10) cents. For copies of bills or other papers, with certificate under seal, for each one hundred words, ten cents. For receiving and filing articles of association, corporations or consolidations, bonds, oath of office, each, one dollar. For recording the same, for each one hundred words, ten cents. For issuing each license, one dollar. For taking acknowledgment of a deed, mortgage, power of attorney, or other writing with certificate under seal, fifty cents. For administering oath to an affiant, fifty cents. [Id. § 5.]

**SEC. 4. [General duties].**—It shall be the duty of the secretary of state, 1st. To countersign and affix the seal of state to all commissions required by law to be issued by the governor. 2nd. To keep a register of all such commissions, specifying the person to whom granted, the office conferred, the date of signing the commission, and when bond is taken, the date and amount thereof, and the names of the sureties. 3rd. To make and keep proper indexes to the records and all public acts, resolutions, papers, and documents in his office. 4th. To give any person requiring the same, and paying the lawful fees therefor a copy of any laws, act, resolution, record or paper in his office, and attach thereto his certificate under the seal of the state. 5th. To take charge at the close of each session of the legislature of all tables, chairs, desks, and other furniture of the two houses thereof, and not permit the same to be wasted or used for other than public purposes during the recess of the legislature. 6th. To take charge of and keep in repair and replenish the furniture of the state house, except as otherwise provided. 7th. To furnish the legislature and the officers thereof, all necessary fuel and stationery when so directed by resolution of the legislature, or either branch thereof. 8th. To print and supervise the distribution of the laws and journals, and keep an account thereof. 9th. To make out and present to the governor, at least ten days before each regular session of the legislature, a report showing the amount of all fees received by him and paid over to the treasurer, the expenditures of his office, the contracts let by the state for fuel, stationery and printing, and for copying, printing, binding and distributing the laws and journals, and for all other printing ordered by the legislature, and stating particularly the manner in which the same have been fulfilled and such general accounts of the business of his office as may be necessary for the information of the legislature. 10th. In the publication of the laws of this state, or the resolution or journals of the legislature, the secretary of state shall cause to be published in each volume a general certificate to the effect that the same as contained in such volume are true copies of the laws and resolutions of the legislature, as the case may be, on file in his office. 11th. Whenever any bill which shall have passed both houses of the legislature shall be returned by the governor with his objections thereto, and upon a reconsideration shall pass both houses by the constitutional majority, it shall be authenticated as having become a law by a certificate thereon to the following effect, viz: This bill having been returned by the governor, with his objections thereto, and after reconsideration, having passed both houses by the constitutional majority, it has become a law this ——— day of ———, A. D. ———, which being signed by the president of the senate and speaker of the house of representatives, shall be deemed a sufficient authentication thereof, and the bill shall be deposited with the laws in the office of the secretary of state. 12th. Whenever any bill which shall have passed both houses of the legislature, and shall not be returned by the governor or filed with his objections in the office of the secretary of state, as

required by section fifteen (15) of article five (5), of the constitution, it shall be the duty of the secretary of state to authenticate the same by a certificate thereon to the following effect, as the case may be, viz.: This bill having remained with the governor five (5) days, Sundays excepted, the legislature being in session, the governor having failed to return this bill to the legislature during its session, and having failed to file it in my office with his objections within five (5) days after adjournment of the legislature, it has thereby become a law. Witness my hand, this—— day of ——, A. D. ——, [Id. § 6.]

SEC. 5. [**Deputy.**—The secretary of state shall have power to appoint a deputy, and when so appointed, the deputy shall do and perform in case of the absence or disability of the secretary of state, all the duties herein authorized and required of the secretary of state, and the secretary of state shall be responsible for all the official acts of his deputy. [Id. § 7.]

SEC. 6. [**Same—Salary.**—Said deputy shall receive a salary of fifteen hundred (1,500) dollars per annum, to be paid by warrant of the auditor of public accounts on the treasurer, said warrant to be drawn monthly. [Id. § 8.]

SEC. 7. [**Administer oaths—Acknowledgments.**—The secretary of the state shall have power to administer oaths and affirmation, acknowledgments, and proof of the execution of deeds, mortgages, power of attorney, and other instruments in writing, to be used or recorded in this state. He shall be allowed such fee as is provided for notary public in such cases made and provided. [Id. § 9.]

#### ARTICLE III.—AUDITOR OF PUBLIC ACCOUNTS.

SECTION 1. [**Residence—Office.**—The auditor shall reside and keep his office at the seat of government. [R. S. § 1, 19. G. S. § 20, 1011.]

SEC. 2. [**General accountant of state.**—The auditor is declared to be the general accountant of the state, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the state, and its revenue, debt, and fiscal affairs, not required by law to be placed in some other office, or kept by some other officer or person.

SEC. 3. [**Report to governor.**—It shall be the duty of the auditor to digest, prepare and report to the governor of the state, at least twenty days before the commencement of each regular session of the legislative assembly: *First.* A full and detailed statement of the condition of the treasury, and the amount of the expenditures for the last fiscal year. *Second.* A full and detailed statement of the public debt, showing fully all liabilities and resources of the state. *Third.* Estimates of the revenue and expenditures for the next succeeding year. *Fourth.* Such plans as he may deem expedient for the support of public credit, for lessening the public expenses, for using the public money to the best advantage, for promoting frugality and economy in public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the state, and for securing uniformity and efficiency in the levying and collection of taxes, and systematizing the work to be done by officers having duties to perform under the revenue law. *Fifth.* A tabular statement, showing separately the whole amount of each appropriation of money, made by law, the amount paid under the same, and the balance unexpended. *Sixth.* A tabular statement, showing separately the amount of money received into the state treasury, from all sources in the preceding fiscal year, the amount received from each county, and for what years paid, the amount of penalties and interest reported collected on delinquent taxes, and the balance due from each county on account of taxes for each year for which such balances may be due. *Seventh.* A tabular statement, showing the whole number of acres of land and value, total value of town lots, and the whole number and value of each item of taxable property returned by the several assessors or county clerks to the state board of equalization.

**Sec. 4. [General duties].**—It shall be the duty of the auditor—*First.* To audit, adjust and settle all claims for services rendered, or expenditures made for the benefit of the state, provided such services are rendered or expenditures made by authority of law, except only such claims as may be expressly required by law to be audited and settled by other officers or persons. *Second.* To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided for by law, and all warrants so drawn shall bear upon their face a reference to the law authorizing the drawing of the same, naming the fund out of which it shall be paid, and shall be countersigned by the state treasurer before it is delivered to the party in whose favor it is drawn. *Third.* To audit, settle, and adjust the accounts of all collectors of the state revenues, and other holders of public money who are required by law to pay the same into the state treasury. *Fourth.* Whenever it is ascertained that by mistake or otherwise, any county treasurer, or other person, has paid into the treasury any sum of money not due the state, the auditor shall, on the state treasurer's certificate that such sum has been paid to him, and that it was not due the state, refund to such county treasurer or other person the amount so paid, by drawing a warrant therefor upon the state treasury. *Fifth.* To keep an account between the state and the state treasurer, charging him with all amounts by him received, and giving him credit for all sums by him paid on account of indebtedness, redeemed or otherwise, in accordance with law. *Sixth.* To keep an account of all debts and credits between the state and the several states, and the United States, and with each county in the state. *Seventh.* To direct prosecutions in the name of the state for all official delinquencies, in relation to the assessment, collection, and payment of the revenue, against all persons who by any means become possessed of public money or property, due or belonging to the state, and fail to pay or deliver the same, and against all debtors of the state. *Eighth.* To procure from the proper officers an abstract and description of all lands within the state not yet procured, and annually hereafter, abstracts and descriptions of such lands as shall become taxable, the expense of all which shall be paid out of the state treasury, and which lists the auditor shall transmit to the clerks of the counties in which such lands may be situated. *Ninth.* To give information in writing to either house of the legislative assembly, whenever required, upon any subject relating to the fiscal affairs of the state, or in regard to any duty of his office. *Tenth.* To furnish offices for himself and the state treasurer, and all fuel, lights, books, blanks, forms, paper, and stationery required for the proper discharge of the duties of their offices, and also such books, blanks, etc., as may be necessary for the use of county clerks, treasurers, assessors, or other officers having duties to perform under the revenue law, which shall be sent, upon the requisition of the county commissioners, to the clerks of the proper counties, for distribution to the several officers; the expense of all which shall be paid out of the state treasury.

**Sec. 5. [Settlements with county treasurers, etc.]**—All county treasurers, or other persons who are by law required to make settlements or pay money into the state treasury at certain specified times, shall, on or before such date, exhibit their accounts and vouchers to the state auditor, who shall, as soon as practicable, examine, adjust, and settle such accounts, and report to the state treasurer the balance found due the state, and if any county treasurer, or other person so required by law to pay funds into the state treasury, shall fail to make the settlement herein required at the proper time, or to pay the amount so found due to the state treasurer, and produce his receipt to the auditor within ten days after the settlement above required, the delinquent shall forfeit to the state all collection fees and mileage allowed by law, and also a penalty of ten per cent. on the amount

**Sec. 4.** The auditor can only audit and adjust claims "provided for by law." An appeal may be taken from his decision and that of the secretary of state. 7 Neb. 105. Under the seventh subdivision of this section in connection with provisions of revenue law then in force, it was held, that a suit against a county treasurer for official delinquencies must be brought by the county clerk at the direction of the auditor. 9 Neb. 435. But see sec. 173, ante page 431.

**Sec. 5.** But see sections 162-168, ante page 430.

wrongfully withheld, and interest on the whole at the rate of fifteen per cent. per annum from the time the same should have been paid until actual payment, and the auditor shall charge such delinquent accordingly; and the whole amount of principal and forfeiture may be recovered by action on the official bond of the delinquent, or otherwise, according to law.

**SEC. 6. [Claims against state.]**—All persons having claims against the state shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled, and allowed within two years after such claims shall accrue; and in all suits brought in behalf of the state, no debt or claim shall be allowed against the state as a set-off, but such as has been exhibited to the auditor, and by him allowed or disallowed, except only in cases where it shall be proved to the satisfaction of the court that the defendant at the time of trial, is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor, by absence from the state, sickness, or unavoidable accident; *Provided*, The auditor shall in no case audit a claim or set-off which is not provided by law.

**SEC. 7. [Examination of witnesses.]**—The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses, or others, on oath or affirmation, touching any matter material to be known in the settlement of such account.

**SEC. 8. [Accounts, etc., preserved—Copies.]**—All accounts, vouchers, and documents, settled or to be settled by the auditor, shall be preserved in his office; and copies thereof authenticated by his official seal, shall be given to any person interested therein who shall require the same, on the payment to the auditor of ten cents for every one hundred words in such copies.

**SEC. 9. [Warrants, when drawn.]**—In all cases of grants, salaries, pay and expenses, ascertained and allowed by law, found due to individuals from the state when audited, the auditor shall draw warrants upon the treasury for the amount; but in case of claims, the adjustment and payment of which are not provided for by law, no warrant shall be drawn by the auditor, or countersigned or paid by the state treasurer, but all such claims shall be reported to the next legislative assembly, with such recommendation as the auditor may deem just.

**SEC. 10. [Decision on claims referred to legislature.]**—If any person interested shall be dissatisfied with the decision of the auditor on any claim, account, or credit, it shall be the duty of the auditor, at the request of said person, to refer the same, with the reason for his decision, to the legislative assembly.

**SEC. 11. [Report of delinquent county treasurers.]**—The auditor shall report to the legislative assembly, within ten days after the commencement of each regular session, a list of all county treasurers, and other persons holding the public money, whose accounts remain unsettled for six months after they should have been settled according to law, or remain unsettled at the close of the fiscal year, with the reason, if any, therefor.

**SEC. 12. [Administer oaths, when.]**—The auditor shall have power to administer all oaths or affirmations required by law, in matters pertaining to the duties of his office, and may do and perform all acts or duties authorized to be performed by notaries public, by the laws of the state, subject however to such restrictions as are provided by law for notaries.

**SEC. 13. [Records—Inspection by legislature.]**—All books, papers, letters, and transactions pertaining to the office of auditor, shall be open to the inspection of a committee of the legislative assembly, or either branch thereof, who shall examine and settle all the auditor's accounts.

**SEC. 14. [Deputy.]**—The auditor shall have power to appoint a deputy, who shall give a bond to the state of Nebraska, with good and sufficient security, in the same sum required of the auditor, which bond shall be approved by the governor, and deposited with the secretary of state, and when so appointed, the deputy may

do and perform, in the absence of the auditor, such acts, herein authorized and required of the auditor, as the auditor may authorize him to do, subject to the same restrictions; *Provided, however,* That the state shall not be liable for, or pay any salary to such deputy other than the salary provided for the auditor for his services, unless allowed by the legislative assembly.

SEC. 15. [Seal.]—The auditor shall keep a seal of office for the authentication of all papers, writings, and documents, required to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the original.

SEC. 16. [Records delivered to successor.]—The auditor shall deliver over to his successor in office all books, papers, records, vouchers, presses, and other furniture, connected with or in any wise appertaining to his office.

SEC. 17. [Fiscal year.]—The fiscal year shall commence on the first day of December in each year, and end on the thirtieth day of November in each year.

#### ARTICLE IV.—TREASURER.

SECTION 1. [Residence—Office.]—The state treasurer shall reside and keep his office at the seat of government. [R. S. 24. G. S. 1016.]

SEC. 2. [General duties.]—It shall be the duty of the state treasurer: *First.* To receive and keep all moneys of the state not expressly required to be received and kept by some other person. *Second.* To disburse the public moneys upon warrants drawn upon the state treasury according to law and not otherwise. *Third.* To keep a just, true, and comprehensive account of all moneys received and disbursed. *Fourth.* To keep a just account with each fund, and each head of appropriation made by law, and the warrants drawn against them. *Fifth.* To render a full statement to the auditor of all moneys received by him from whatever source; if on account of the revenue for what years; of all penalties and interest on delinquent taxes reported to, or accounted for, to him, and of all disbursements of the public funds; with a list, in numerical order, of all warrants redeemed, the name of the payee, amount, interest, and total amount, allowed thereon; with the amount of the balance of the several funds unexpended; which statement shall be made on the first day of December, March, June, and September, and oftener, if required. *Sixth.* To report to the legislative assembly as soon as practicable, but within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the preceding fiscal year. *Seventh.* To give information in writing to either house of the legislative assembly, whenever required upon any subject connected with the treasury, or touching any duty of his office. *Eighth.* He shall account for and pay over all moneys received by him as such treasurer, to his successor in office, and deliver all books, vouchers, and effects of office to him, and such successor shall receipt therefor.

SEC. 3. [Records—Inspection by legislature.]—All the books, papers, letters and transactions pertaining to the office of treasurer, shall be open to the inspection of a committee of the legislative assembly, or either branch thereof, to examine and settle all accounts, and to count all moneys; and when the successor of any such treasurer shall be elected and qualified the state auditor shall examine and settle all accounts of such treasurer, remaining unsettled, and give him a certified statement showing the balance of moneys, securities, and effects, for which he is accountable, and which have been delivered to his successor, and report the same to the legislative assembly.

SEC. 4. [Administer oaths, when.]—The treasurer shall have power to administer all oaths required by law, in matters pertaining to the duties of his office.

SEC. 5. [Seal—Copies of records—Evidence.]—The treasurer shall

keep a seal of office for the authentication of all papers, writing, and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received as evidence the same as the original papers and documents.

SEC. 6. [**Neglect to pay warrant.**—If the state treasurer shall wilfully refuse or neglect to pay any warrant lawfully drawn upon the treasury, when the money for the payment of the same is in the treasury, he shall forfeit and pay fourfold the amount, to be recovered by action against the treasurer and his sureties, on his official bond or otherwise. He shall also suffer such punishment as the law may provide.

SEC. 7. [**Deputy.**—The treasurer shall have power to appoint a deputy, who shall give a bond to the state of Nebraska, with good and sufficient security, to be approved by the governor, in the sum of ten thousand dollars, which bond, together with a copy of his appointment and oath of office, the deputy shall deposit in the office of the secretary of the state, and the said deputy may do and perform, in the absence of the treasurer, all of the acts and duties that he may be authorized to perform by the treasurer, subject to the same restrictions as the treasurer, and the treasurer shall be responsible for all the official acts of his deputy.

SEC. 8. [**Records delivered to successor.**—The treasurer shall deliver over to his successor in office, all books, papers, records, vouchers, presses, and furniture appertaining thereto.

SEC. 9. [**Fiscal year.**—The fiscal year shall commence on the first day of December in each year, and end on the thirtieth day of November in each year.

SEC. 10. [**Judgments owned by state—Transfer.**—That the state treasurer be and he is hereby authorized to sell, assign, and transfer any judgment held and owned by the state against any person or persons, or body corporate, and to sell, assign, and transfer any security in the nature of a mortgage held on behalf of the permanent school fund, to any person or persons, or body corporate that will pay the full amount thereof, and such sale and assignment shall transfer to and confer upon such purchaser or purchasers all the rights of the state in such judgments or mortgages. [1877 § 1, 207.]

#### ARTICLE V.—ATTORNEY GENERAL.

SECTION 1. [**Appear for state.**—The attorney general shall appear for the state, and prosecute and defend all actions and proceedings, civil or criminal, in the supreme court, in which the state shall be interested or a party, and shall also, when requested by the governor, or either branch of the legislature, appear for the state and prosecute and defend in any other court, or before any officer, any cause or matter, civil or criminal, in which the state may be a party, or interested. [1869 § 3, 165. Amended, 1873. G. S. 1018.]

SEC. 2. [**Prosecute official bonds, state contracts, etc.**—The attorney general may, on his own motion, or whenever thereunto requested by any officer of the executive department, having charge of any official bond, contract, or matter, shall upon a breach thereof, prosecute any official bond deposited in any office of the executive department, or any contract in which the state is interested, and may, and when so requested shall bring, prosecute, and defend for the state, any suit, matter, or thing, civil or criminal, in which the state is interested, or relating to any matter connected with the executive department. [Id.]

SEC. 3. [**Counsel and advise officers.**—The attorney general shall consult with and advise the district attorneys, when requested by them, in all matters

SEC. 7. See sec. 19, chap. 10. ante page 74.

SEC. 10. "An act to enable the state to realize upon judgments and mortgages held and owned by the state against any person or persons, or body corporate, whether securities held on behalf of the permanent school fund, or otherwise." Laws 1877, 207. Took effect June 1, 1877.

ART. V. "An act to provide for the election of an attorney general for the state of Nebraska, and to prescribe his duties, and fix his compensation." Laws 1869, 164. Took effect Feb. 15, 1869.

SECS. 1-2 of original act superseded by election law, ante p. 257.

SECS. 9-10 of original act repealed 1881, 102, ante p. 75. See as to foreclosure of school fund securities, ante page 487.

pertaining to the duties of their office; and he shall have authority to require their aid and assistance in all matters pertaining to his duties in their respective districts, and may, in any case brought to the supreme court from their respective districts, demand and receive the assistance of the district attorney from whose district such case is brought. He shall also, when required, give his opinion in writing, without fee, upon all questions of law submitted to him by the legislature, or either branch thereof, or by the governor, secretary of state, treasurer, or auditor. [1869 § 5, 165.]

SEC. 4. [**Assist officers—Report to legislature.**]—Whenever requested by the governor, secretary of state, treasurer, or auditor, he shall prepare proper drafts for contracts, forms, and other writings which may be wanted for the use of the state; and he shall report to the legislature, or either branch thereof, whenever requested, upon any business pertaining to the duties of his office. [Id. § 6.]

SEC. 5. [**Pay money into treasury.**]—All moneys received by the attorney general, belonging to the people of this state, shall be immediately, upon the receipt thereof, paid by him into the state treasury. [Id. § 7.]

SEC. 6. [**Register of cases.**]—He shall keep in proper books, provided for that purpose at the expense of the state, a register of all actions and demands prosecuted or defended by him in behalf of this state, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office. [Id. § 8.]

#### ARTICLE VI.—COMMISSIONER OF PUBLIC LANDS AND BUILDINGS.

SECTION 1. [**Deputy.**]—The said commissioner shall appoint a deputy, who shall attend at the office of said commissioner, from whom he shall require a bond not less than ten thousand dollars, and who shall, in the absence of said commissioner, perform all acts devolving upon him by law. [1877 § 2, 172.]

SEC. 2. [**Seal.**]—The said commissioner shall procure a seal with proper devices and the words "Nebraska State Land Office" engraved thereon, which seal shall be used by him officially in all matters pertaining to his office wherein a seal is required. [Id. § 3.]

SEC. 3. [**Records.**]—The records appertaining to all public lands of the state shall be kept in the office of said commissioner at the seat of government. [Id. § 4.]

SEC. 4. [**Duties.**]—The commissioner shall perform such duties as may be devolved upon him by the boards provided for in section 19 of article V and section 1 of article VIII of the constitution. [Id. § 5.]

#### ARTICLE VII.—BOARD OF PUBLIC LANDS AND BUILDINGS.

SECTION 1. [**Officers.**]—That the board created by section 19 of article 5 of the constitution of the state of Nebraska, consisting of the commissioner of public lands and buildings, the secretary of state, treasurer, and attorney general of the state, shall hereafter be known in law as the "Board of Public Lands and Buildings of the State of Nebraska," and shall have general supervision and control of all the public lands, lots, and grounds, and all institutions, buildings and the grounds thereto, now owned or that may hereafter be acquired by the state, including the saline lands, together with all salt springs, the penitentiary lands, internal improvement lands and lots, as well as the state capitol building and grounds, the state penitentiary and grounds, the state hospital for the insane and grounds, the asylum for the deaf and dumb and grounds, the asylum for the blind and grounds, and all other lands, lots, grounds and buildings now belonging or hereafter acquired by the state; *Provided, however,* That all lands, lots, grounds and buildings or institutions set aside for and devoted to educational purposes, be and hereby are excepted from the provisions of this act. [1877, § 1, 189.]

ART. VI. "An act defining the duties of the commissioner of public lands and buildings." Laws 1877, 172. Took effect Feb. 13, 1877. Sec. 1 of original act repealed 1881, 102, ante p. 75.

ART. VII. "An act establishing a board of public lands and buildings of the state of Nebraska and defining their duties." Laws 1877, 189. Took effect Feb. 13, 1877. See 6 Neb. 287. 7 Id. 45.

SEC. 2. [**Powers.**].—The board of public lands and buildings shall have the power to make general direction, according to law, for the sale, leasing, or other disposition of the lands, lots and grounds belonging to the state as aforesaid, and shall give warrant by their proceedings as such board, to the commissioner of public lands and buildings for his action in the sale or leasing of such lands, lots and grounds, and shall require of the said commissioner a full and detailed report of all such sales, leases, and the funds thereby acquired, as hereinafter directed.

SEC. 3. [**Custody of buildings.**].—The board shall have general custody and charge of all buildings and institutions and the grounds thereto coming under the provisions of this act, and shall be responsible for the proper keeping and repair of the same, and shall require from the commissioner of public lands and buildings who shall be direct custodian of such institutions, buildings and grounds a report, at least once in every three months, as to the condition of the same. *Provided*, That no additions shall be made to any public buildings without special appropriation of the legislature.

SEC. 4. [**Disbursement of funds.**].—The said board shall have power under the restrictions of this act, to direct the general management of all the institutions and be responsible for the proper disbursement of the funds appropriated for their maintenance, and shall have reviewing power over the acts of the officers of such institutions, and shall, on the part of the state, at regular meetings hereinafter directed, audit all accounts of such officers including the accounts of the commissioner of public lands and buildings, except his salary.

SEC. 5. [**Accounts of officers.**].—At the regular meeting of the board shall be their duty to examine the accounts of the public officers contemplated in this act and to determine whether the same are entitled to be paid out of the moneys appropriated for the purpose of maintaining the institutions for which they are charged, and if correct, shall approve the same, which approval shall be signed by the president and countersigned by the secretary under date of such action; and if the accounts be incorrect, exorbitant, or not entitled to payment from such appropriations, the same shall be disapproved and returned to the claimant, such board keeping a record of the same.

SEC. 6. [**Payment of accounts.**].—When the accounts above mentioned have been filed with the board, and shall have been audited and approved by the board, the auditor of public accounts is hereby authorized and directed, upon the presentation to him of such accounts so authenticated, to issue his warrant on the treasurer against the proper fund or appropriation, for the amount therein stated to the claimant or his assignee. And no accounts coming under the provisions of this act shall be entitled to payment until they have been so approved by the board.

SEC. 7. [**Charges against officers.**].—It shall be the duty of the board to take cognizance of all charges or complaints made against the said public officers and at a regular meeting, to give an impartial hearing to such charges, and to defend against them, if any, and report the charges, evidence, and their conclusions in the matter, to the governor, within six days after the determination of the investigation.

SEC. 8. [**Meetings.**].—The said board shall meet at least once in each month on the first Monday thereof, for the transaction of business; the commissioner of public lands and buildings shall be ex-officio president of the board, and shall preside at all meetings and execute all other duties prescribed for him in this act, and shall sign all papers and instruments or documents that shall be approved, made or directed by the board.

SEC. 9. [**Secretary.**].—The secretary of state shall be ex-officio secretary of the board, and shall keep a careful record of all the proceedings of the board in a substantial and well bound book, to be kept for that purpose, and which shall be known as the "Record of the proceedings of the board of public lands and buildings of the state of Nebraska," and the said secretary shall countersign all papers, instruments or documents approved, made or directed by the board.



**SEC. 10. [Quorum].**—It shall be necessary for at least three members of said board to be present at any meeting for the transaction of business, and in absence of the president, or secretary, the place shall be filled by election, *pro tempore*; *Provided*, That no meeting for business shall be held without the presence of one or the other of them.

**SEC. 11. [Special meetings].**—The president shall have the power to call the board together in special meeting, if in his judgment the public good requires the same to be done for any purpose contemplated in this act; and such call shall be by written notice, stating the purpose of meeting, which notice shall be delivered to each member of the board.

**SEC. 12. [Duties of commissioner].**—It shall be the duty of the board at their first meeting after the passage of this act to direct the commissioner of public lands and buildings to procure an authentic list of all the lands that have come into possession of the state by donation or purchase, or otherwise, that come under the provisions of this act, and enter the same in numerical order, each under the class of lands to which it belongs, in a tract book to be procured and kept for that purpose; and they shall see that all deeds of conveyance, confirmation of selection, certificate, or other direct evidence through which the state derives title to the said lands, are recorded in the counties in which the lands are situated; and that all original documents conveying or confirming titles of land to the state shall be collected and placed in the office of the commissioner of public lands and buildings, and by him recorded in a book to be kept for that purpose; and the said commissioner shall thereafter be the proper custodian of all such records and papers relating to the lands mentioned in this act.

**SEC. 13. [Same].**—When such lists shall have been obtained, the board shall proceed with the said commissioner to check from land records now in possession of the state, all the lands and lots that have been alienated by sale, donation, or otherwise, and by what other means necessary ascertain and enter under a corrected list, a true list of all the lands, lots, and grounds, now the property of the state as aforesaid, specifying for what purpose such lands, lots, or grounds, are dedicated and set aside, and entering in a column opposite [the] tract in each case, the appraised value of the same; which books and lists, when completed, shall be kept in the office of the commissioner of public lands and buildings.

**SEC. 14. [Appraisalment of state lands].**—The board shall, as soon as practicable, provide for an appraisalment of all such lands and lots, and enter the same of record as aforesaid; and shall, when the public good requires the same as directed by the legislature, authorize the commissioner of public lands and buildings to advertise and sell, according to law, such portion of said lands and lots as is necessary to meet the requirements of the state as directed by law.

**SEC. 15. [Schedule of state property].**—The board shall require the several officers in charge of the institutions and buildings of the state, coming under the provisions hereof, to make out a correct schedule of all property in their charge belonging to the state, to be certified under oath, which shall be filed with the secretary of the board, and a copy thereof furnished to the commissioner of public lands and buildings, together with a list of buildings and grounds.

**SEC. 16. [Acts applicable].**—All laws now in force relating to the public lands and buildings not in conflict with the provisions of this act shall apply to this board, and all laws conflicting therewith are hereby repealed.

**SEC. 17. [Leasing convict labor].**—It shall be the duty of said board, at their first meeting, to cause to be published in at least three papers of general circulation, one of which shall be published in Lincoln, one in Omaha, and one in Chicago, advertisements for sealed proposals for the leasing of penitentiary and penitentiary grounds and convict labor. Said proposals shall provide further, for payment of all penitentiary expenses, including salaries of officers, and other help, the heating of buildings, boarding and clothing convicts. The cost at all times shall be estimated per capita. Said board shall have power to make contracts with lowest bidder, for a term of not more than ten years; *Provided*, No

bid shall be received where the net cost per capita shall exceed sixty cents per day, and the estimate shall be on convicts only. Any contract entered into shall provide that the general management and discipline of the convicts shall be under the control of the said board and the warden, and no contract shall be made which shall deprive the convicts of any privileges granted by law.

#### ARTICLE VIII.—CLAIMS AGAINST THE STATE.

**SECTION 1. [Audit and approval.]**—All claims of whatever nature upon the treasury of this state, before any warrant shall be drawn for the payment of the same, shall be examined and adjusted by the auditor of public accounts, and approved by the secretary of state; *Provided, however,* That no warrant shall be drawn for any claim until an appropriation shall have been made therefor. [1877 § 1, 202.]

**SEC. 2. [Record—Appeal.]**—The auditor of public accounts shall keep a record of all claims presented to him for examination and adjustment, and shall therein note the amount of such claim as shall be allowed or disallowed, and in case of the disallowance of all such claims, or any part thereof, the party aggrieved by the decision of the auditor and secretary of state, may appeal therefrom to the district court of the county where the capitol is located, within twenty days after receiving official notice. Such appeal may be taken in the manner provided by law in relation to appeals from county courts to such district courts, and shall be prosecuted to effect as in such cases; *Provided, however,* That the party taking such appeal shall give bond to the state of Nebraska in the sum of two hundred dollars, with sufficient surety, to be approved by the clerk of the court to which such appeal may be taken, conditioned to pay all costs which may accrue to the auditors of public accounts, by reason of taking such appeal. No other bond shall be required.

**SEC. 3. [Judgment in district court.]**—In case the appeal shall be taken as provided in section two of this act, and on trial thereof, the district court shall be of the opinion that the decision of the said officers was wrong, either in fact or law, the said court shall reverse the same, and by its order and mandate require the said auditor to issue a warrant, in accordance with the provisions of section one of this act, upon the treasury for such an amount as shall be determined on the trial of such appeal to be legally due thereon. If either party feel aggrieved by the said judgment, the same may be re-reviewed in the supreme court as in other cases.

**SEC. 4. [Action when barred.]**—No claim which has been once presented to such auditor and secretary of state, and has been disallowed, in whole or in part, shall ever again be presented to such officers, or in any manner acted upon by them, but shall be forever barred, unless an appeal shall have been taken, as provided in section two of this act.

**SEC. 5. [Part of claim allowed.]**—When a claim has been, in part allowed by such officers, a warrant shall be drawn as in other cases where the whole claim shall be allowed.

#### ARTICLE IX.—DISPOSAL OF ESCHEATED ESTATES.

**SECTION 1. [Escheated lands—Sale.]**—That the state treasurer is hereby authorized and required to sell and dispose at public auction, all the right, title and interest of the state, to any lands which have escheated to the former territory of Nebraska or the state of Nebraska, for want of heirs. [1875 § 1, 51.]

**SEC. 2. [Same—Title vests in state.]**—Upon the failure of heirs, the

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ART. VIII. "An act to provide for examination and adjustment of claims upon the state treasury in accordance with the provisions of section nine of article nine of the constitution." Laws 1877, 202. Took effect Feb. 17, 1877. Under this act the right to bring an original action against the state is denied and the courts can acquire jurisdiction in such cases only by appeal from the decision of the auditor and secretary of state. 7 Neb. 107.

ART. IX. "An act to regulate escheats." Laws 1875, 51. Took effect Feb. 25, 1875.

title shall vest at once in the state, without an inquest or other proceedings in the nature of office found.

**SEC. 3. [Sale—Notice.]**—The state treasurer, before making any such sale shall cause public notice to be given for at least four weeks before the time fixed for such sale, of the time and place of making the same, which said notice shall be by publication, in not less than one newspaper published in the county where the land lies; or, if no newspaper be published in said county, by publication in two of the papers printed at the seat of government.

**SEC. 4. [Deed.]**—Upon the sale of said lands, the treasurer shall make out a certificate to the purchaser or purchasers, stating the price of the same, and the county where the same lie, giving a particular description of the same, when and where sold, and the governor of the state, upon the presentation of said certificate, shall, as governor of the state, execute to such purchaser or purchasers, his or her assignee, or assignees, a deed for the land described in said certificate; and the secretary of state shall countersign the said deed, and affix the great seal of the state to the same; and the said deed so executed as aforesaid, shall vest in the grantee or grantees, his or her heirs or assigns, all the title of the state of Nebraska, in and to the said lands; and the said grantee shall have the same right of action in the name of the state of Nebraska, as the state would have had without said sale and conveyance.

#### ARTICLE X.—REPORTS OF STATE OFFICERS.

**SECTION 1. [Number of copies.]**—That the state officers who are required by law to make biennial reports to the legislature shall cause the same to be printed by the state printer, and have ready for distribution on or before the first day of the session of the legislature, as hereinafter provided, viz: one thousand copies each of the reports of the auditor, treasurer, secretary of state, and commissioner of public lands and buildings, and five hundred copies each of the reports of the attorney general, superintendent of public instruction, state librarian, and adjutant general. [1881 § 3, chap. 80.]

**SEC. 2. [Deposit in state library.]**—The secretary of state shall be required to deliver to the state librarian, two hundred copies each of the reports of the auditor, treasurer, secretary of state, and commissioner of public lands and buildings, and one hundred copies each of the reports of the attorney general, superintendent of public instruction, state librarian and adjutant general, who shall preserve the same for the use of the state officers and members of the legislature. [Id. § 4.]

**SEC. 3. [Bound volume.]**—It shall be the further duty of the state librarian to select one copy each of said reports and have the same bound in one volume, which shall ever be kept in the state library for public inspection. [Id. § 5.]

**SEC. 4. [By whom reports printed.]**—The state printer receiving the copy for printing said biennial reports during, or any time before the contract shall have expired, shall furnish and complete the order given under his contract, and the same shall be audited and paid for as provided by law. [1875 § 2, 65.]

#### ARTICLE XI.—STATE BONDS.

**SECTION 1. [Issuance.]**—That the governor and secretary of state be and they are hereby authorized and required to issue the bonds of the state to the amount of fifty thousand dollars, payable ten years after date, with interest at ten per cent. per annum, payable semi-annually on the first day of July and January of each year; principal and interest payable in the city of New York. Said bonds shall be of the denomination of one thousand dollars each. [1875 § 1, 173.]

**ART. X.** "An act to provide for the publication of the laws and journals of the sixteenth session of the legislature, and the biennial reports of certain state officers, and for the preservation of said reports." Approved and took effect Feb. 28, 1881.

**ART. XI.** Secs. 1-2. "An act for the issuing of state bonds for the purpose of providing seed for the citizens of counties devastated by grasshoppers during the year 1874." Laws 1875, 173. Took effect Feb. 17, 1875. Secs. 2-3 of original act, providing for board of relief, and Sec. 1 of supplemental act, providing for registration of bonds, are omitted.

**Sec. 2. [Payment of interest and principal].**—The annual interest and principal of said bonds, when the same becomes due, shall be paid by the state treasurer out of the state sinking fund, and the coupons and bonds when so paid shall be cancelled and preserved by the state treasurer as vouchers for the payments so made. [Id. § 4. Amended 1877, 68.]

**Sec. 3. [Bonds for funding state indebtedness.]**—That for the purpose of funding the foregoing indebtedness, the governor and secretary of state be and they are hereby authorized and required to issue the lithographed coupon bonds of the state of Nebraska, to the amount of five hundred and sixty-six thousand, three hundred and sixty-nine dollars and thirty-eight cents, payable twenty years after April 1st, 1877, with interest at eight per cent. per annum, said interest payable semi-annually on the first day of October and April of each year thereafter. Principal and interest of said bonds shall be payable at the treasury of this state. Said bonds to be of the denomination of not more than one thousand dollars each, and the same, with the coupons, shall be payable to bearer. Said bonds, when issued, shall be registered by the auditor of public accounts, in a book kept for that purpose in his office, and when so registered and certified by him under his seal of office to have been regularly and properly issued, and that the signatures thereto are genuine, shall be sold in the manner following, to wit: *First.* To the permanent school fund of this state, to an amount sufficient to take up the said certificates of indebtedness now held by said fund issued as hereinbefore set forth. *Second.* To the permanent school fund of this state, to an amount sufficient to invest whatever funds may be in the treasury of the state on the first day of April, 1877, belonging to said fund and proper to be invested, it being the intention to give preference to the said school fund to invest its moneys in the bonds hereby required to be issued, before the same shall be offered for sale in open market. It shall be the duty of the board of commissioners named in section one of article eight of the constitution, to invest the said moneys in said bonds, as hereinbefore provided. And whatever amount of said bonds shall be purchased by the said school fund shall be without premium. Any and all bonds so as aforesaid purchased by the said school fund shall be and remain the property thereof. *Third.* If any bonds shall then remain unsold, it shall be the duty of the state treasurer to advertise for bids therefor, in one daily newspaper in the city of New York, Omaha and Lincoln, for at least thirty days prior to any sale thereof; all bids shall be sealed and remain unopened until the day of sale as mentioned in the said advertisement. Upon the day of sale the treasurer shall open any and all bids, and in connection with the governor and auditor of public accounts, shall examine the same and award the said bonds or any thereof, to the best and highest bidder therefor, but in no event shall any of said bonds be sold at a discount. Persons or corporations owning any of said warrants or certificates of indebtedness may be bidders therefor; *Provided,* No bid shall be received for a less sum than one thousand dollars; and in awarding the said bonds at such sale, the said officers shall take into consideration that fact, and shall give preference to the creditors of the state; *Provided,* Such bids be of equal advantage to the best interests of the state. Upon the sale of said bonds, if the bid of any person holding any of such warrants or certificates of indebtedness be accepted, the said warrants or certificates shall be received by the treasurer in exchange for said bonds; if such bids be awarded to other persons, cash only shall be received in exchange therefor. Such sale of said bonds with the coupons attached, shall take place at the treasury of the state, on or before the first day of April, 1877, and thereupon it shall be the duty of the said treasurer to pay all of said warrants and certificates, together with interest thereon, as herein provided, out of the sales of said bonds when presented to him for payment; *Provided,* That all interest shall cease on any of said warrants or certificates if not presented for payment on or before the first day of May, 1877. [1877 § 1, 192.]

SECS. 3-7. "An act to provide for funding of all outstanding warrants and other indebtedness of the state." Laws 1877, 120. Took effect Feb. 14, 1877. Preamble, reciting amounts of indebtedness, omitted.

**SEC. 4. [Custody of bonds.]**—The treasurer of the state shall be the custodian of all bonds purchased by the permanent school fund as aforesaid. [Id. § 2.]

**SEC. 5. [Payment of principal and interest.]**—The principal and interest accruing on said bonds shall be payable in the currency of the United States, from the sinking fund; the coupons upon payment shall be canceled by the treasurer. [Id. § 3.]

**SEC. 6. [Cancellation of warrants.]**—Upon the exchange or payment of such warrants and certificates as herein provided, the auditor of public accounts and treasurer shall cancel the same by writing across the face of each warrant and certificate the words "canceled by act of the legislature," giving the date of the approval of this act, and sign their names to such cancellation, and said treasurer shall report to the next regular session of the legislature his doings, under the provisions of this act. [Id. § 4.]

**SEC. 7. [Penalty.]**—Any person offending against the provisions of this act shall be deemed guilty of a felony, and shall be punished by fine not less [than] \$5,000 and not more than \$10,000, and by imprisonment in the state prison not less than five years, and not more than ten years, in the discretion of the court pronouncing sentence. [Id. § 5.]

#### ARTICLE XII.—SUPPLIES FOR STATE INSTITUTIONS.

**SECTION 1. [Proposals.]**—That all purchases and contracts for supplies for any of the departments and public institutions of the state, where the public exigencies do not require the immediate delivery of the articles, shall be by advertising a sufficient time previously for proposals for supplying the same. [1877 § 1, 199.]

**SEC. 2. [Board of supply—Proposals.]**—At least one month previous to the first day of January, April, July and October, respectively in each year, a board consisting of the governor, commissioner of public lands and buildings, secretary of state, treasurer and attorney general, shall meet with the warden of the state prison, and the superintendent of each of the asylums or other institutions furnished by the state, and determine the supplies that may be necessary for three months, except articles as may be perishable and cannot be kept. Said board shall designate clearly the quantity and quality of the articles, and shall then advertise for ten days in some newspaper published at the capital, having general circulation in the state, before the first day of January, April, July and October respectively, for proposals for furnishing said articles and for each institution separately, to be delivered at the institution within ten days after the first day of the months aforesaid; *Provided*, That the board may permit the delivery of the goods monthly, if in their judgment it be deemed best. And the bids which propose to furnish the supplies for either institution at the lowest rate, shall be received for such institution; *Provided further*, That no proposal shall be considered by said board unless the same is accompanied by a bond with such security as the board shall determine, with condition to furnish said articles as proposed in said bid.

**SEC. 3. [Other supplies.]**—All supplies for such institutions not purchased as provided in this act, shall be purchased in such manner as shall be directed by said board by written instruction.

**SEC. 4. [Advertisement.]**—The head of each of the executive departments respectively shall advertise for proposals for supplying the departments in accordance with the provisions of this act.

**SEC. 5. [Payment.]**—All vouchers for supplies, having been examined and approved by said board or the head of the department, as the case may be, shall be approved by the secretary of state, and thereupon the auditor of state shall draw his warrant upon the treasurer for the amount.

## ARTICLE XIII.—MISCELLANEOUS PROVISIONS.

**SECTION 1. [Accumulation of funds in excess of \$100,000].—**

Whenever there shall have accumulated in the hands of the state treasurer moneys of the state to an amount in excess of the sum of one hundred thousand dollars, the state treasurer shall in writing notify the governor and auditor of state of that fact and thereupon within three days after the service of such notice, the governor, auditor, and treasurer shall meet and determine whether such excess is necessary to be retained in the treasury, for the purpose of meeting the current demands thereon; and the record of said notification and the proceedings of said meeting and of its finding, shall be made and signed by each of such officers, and preserved in the office of the auditor, who shall act as the secretary of such meeting. [1877 § 1, 152.]

**SEC. 2. [Investment of excess.]—**In case said officers shall find that such excess is not necessary to meet the current demands upon the treasury, the same shall be immediately invested in United States four per cent bonds, by the treasurer, who shall deposit the same in some safe deposit, to be designated by the governor, auditor, and treasurer, in writing, signed by them and made of record in the auditor's office, and there kept until it shall become necessary to convert the same into money, which necessity shall be determined and the record thereof kept in like manner as hereinbefore provided, and a statement of any such investment or sale under oath shall be published within ten days after the same is made in some newspaper published at the capital, to be designated in writing by the governor. There shall also be published in the same paper, a monthly statement under oath, of the amount of cash balance in the state treasury, and of the amount invested as aforesaid. [Id. § 2.]

**SEC. 3. [Penalty.]—**Any officer charged with the duties hereinbefore mentioned, who shall make or publish any false statement, or swear falsely in respect to any matter or thing, in respect to which a sworn statement is herein required, shall be deemed guilty of perjury, and shall be prosecuted and punished accordingly. [Id. § 3.]

**SEC. 4. [Defaulting county treasurers.]—**The auditor of public accounts, state treasurer, and attorney general, shall form a board, and as such are hereby authorized and empowered to make all settlements for moneys due the state of Nebraska from any county treasurer or his bondsmen, against whom judgment has been rendered in any court of this state, in such manner as in their judgment shall be to the best interests of the state. [1877 § 1, 201.]

## CHAPTER 84.—STATE CEMETERY.\*

**SECTION 1. [Lands set apart.]—**That eighty acres of land belonging to the state of Nebraska, to be selected as hereinafter provided, be and the same are hereby set apart for the uses and purposes of a state cemetery at or near Lincoln, the capital of the state. [1869, 250. G. S. 1026.]

**SEC. 2. [Trustees—Election.]—**That at the election for city officers of said city of Lincoln, occurring next after the passage of this act, the qualified voters of said city shall elect three trustees, to be known as "trustees of the state cemetery," one of whom shall hold his office for one year, one for two years, and one for three years, the term of service of each respectively to be decided by lot, so that one of said trustees shall be elected annually by the qualified voters aforesaid, at each annual election for city officers of said city thereafter occurring. Said trustees shall be a body corporate, with power to sue and be sued, contract and be contracted with, and acquire, and hold, or convey property, real or personal, for all purposes consistent with the provisions of this act.

SECS. 1—3. "An act to provide for the safe keeping of moneys belonging to the state." Laws 1879, 152. Took effect June 1, 1879.

SEC. 4. "An act to provide for a state board for the settlement of claims against defaulting county treasurers and their bondsmen." Laws 1877, 201. Took effect June 1, 1877.

\*NOTE.—"An act to provide for a state cemetery at Lincoln." Laws 1869, 250. G. S. 1026. Took effect Feb. 15, 1869.

**SEC. 3. [Site—Selection.]**—That within sixty days from the passage of this act, said trustees shall select, subject to the approval of the governor, a site for said cemetery, not more than three miles distant from the state capitol building, which said site, when so selected as aforesaid, shall be conveyed by the governor to said trustees, to be held, used, and controlled by them for the benefit of the state, and for the uses and purposes herein set forth.

**SEC. 4. [Survey—Divisions—Sale of lots.]**—Said trustees shall cause the said lands to be laid off and platted by a competent surveyor, to be then selected, and shall set apart, in suitable subdivisions, not less than fifty acres of said cemetery, to be devoted as burial places for the inmates of the various benevolent, or other public institutions of the state, which are, or may hereafter be located at Lincoln. The residue of said cemetery, not exceeding thirty acres, shall be set apart as a burial ground for the uses and purposes of the citizens of Lincoln, and shall be subdivided and platted by said trustees, and sold, in lots of suitable size, and upon such terms and at such prices as said trustees may prescribe, to citizens of Lincoln, the proceeds of such lots to be devoted, under the direction of said trustees, to the improvement and ornamentation of the grounds, and for such other purposes, consistent with the provisions of this act, as they may determine.

**SEC. 5. [Land sold—Proceeds.]**—That eighty acres of land belonging to the state, in addition to the cemetery site, herein provided for, to be selected by the governor, shall be sold at public or private sale, as the governor may determine, the proceeds of said sale to be by the governor paid over to said trustees, to be by them expended in suitably enclosing and ornamenting with forest trees, evergreens, and shrubbery, the cemetery grounds aforesaid.

**SEC. 6. [Sexton.]**—The said trustees shall have power to employ a sexton to take charge of said cemetery, and keep the same in good order and repair, and superintend the setting out of trees, and the care of the same, and perform such other duties as said trustees shall prescribe, and they shall pay to said sexton such salary, out of the proceeds of the sale of the lots or lands herein provided for, as they shall deem just and reasonable.

**SEC. 7. [Trustees—Powers.]**—Said trustees shall have power to prescribe all needful rules and regulations for the government of said cemetery grounds, and for the burial of the dead from the various public institutions of the state, in the subdivisions set apart by them for that purpose, and to do and perform such other duties, consistent with the objects herein contemplated, as they shall deem necessary for the good government of the same.

#### CHAPTER 85.—STATE LIBRARY.

**SECTION 1. [What shall constitute.]**—That the books, pamphlets, maps, and charts, belonging to the state library, now in the state library, or which shall hereafter be added to the same, shall constitute the state library. [1871 § 1, 12.]

**SEC. 2. [Divisions—Librarians.]**—There shall be two divisions of the state library, one of which shall embrace all miscellaneous works, books, pamphlets, maps, and charts, and the statutes and other books required by law to be deposited in the office of the secretary of state, and shall be known as the miscellaneous division of the state library. The other shall embrace all books of reports, and other law books, and shall be known as the law division of the state library.

**SEC. 3. [Directors.]**—The governor, secretary of state, and auditor shall constitute a board of directors of the miscellaneous division, and the judges of the supreme court shall constitute a board of directors of the law division of the state library.

**SEC. 4. [Rules.]**—Each board of directors shall have power to make such rules not inconsistent with this act, for the regulation of the division of the library under their direction, as they may elect proper, and may prescribe penalties for

NOTE.—“An act regulating the state library.” Laws 1871, 52. Chap. 75. G. S. 1028. Took effect Mar. 5, 1871. Sec. 9 of original act repealed 1881, 102, ante p. 75. Sec. 10 superseded by sec. 8, Art. VI. Const.

any violations thereof, which shall be collected in the same manner as for non-return or injury of any books.

SEC. 5. [**Who may take books.**—Books may be taken from the state library by the members of the legislature, and its officers, during the session of the legislature, and by the officers of the executive department of the state, and the judges of the supreme court and district courts; and no other person shall be permitted to take or detain from the library more than two miscellaneous works at any one time, or take the same away from the capitol.

SEC. 6. [**Register of books loaned.**—Each librarian shall cause to be kept a register of all books issued and returned at the time they shall be issued and returned, and none of the books, except the laws, journals, and reports of this state, which may be taken from the library, shall be detained more than ten days, and all the books taken out by officers or members of the legislature, shall be returned at the close of the session.

SEC. 7. [**Failure to return books.**—If any person injure, or fail to return any book taken from the library, he shall forfeit, and pay to the librarian of the division to which it belongs, for the use of the library double the value thereof, or of the set to which it belongs, if a set is broken by its loss, to be recovered, by an action, in the name of the people of the state, in any court of competent jurisdiction; and before the auditor shall issue his warrant in favor of any person authorized to take books from the library for the value of his services, or amount of his salary, he shall be satisfied that such person has returned all books taken from the library, or settled for the same; otherwise he shall deduct all accounts for the detention or injury of such books.

SEC. 8. [**Librarian's report to governor.**—The librarian shall, on or before the 20th day of December in each year, report to the governor the condition of the division under his charge, stating the number of volumes contained therein, the number of volumes purchased during the past year, and the cost thereof, the number of volumes received by donation, the number of volumes injured or not returned, if any, and the amount received in compensation therefor, and such suggestions and further information as may be deemed by him desirable.

SEC. 9. [**Annual appropriation.**—Two hundred dollars shall be annually paid out of the state treasury for the use of the library, one-half for each division, which amount, together with the amounts received from fines and forfeitures, under this act, shall be annually expended in the purchase of additional books, under the direction of the board of directors.

SEC. 10. [**Books stamped and marked.**—It shall be the duty of each librarian to cause each book in his division to be labeled with a printed or stamped label containing the words "Nebraska State Library," and also to write the same words on the thirtieth page of each volume.

SEC. 11. [**Books—Sale—Exchange.**—The directors of the law division of the state library may sell or exchange any surplus or duplicate sets of reports or law books in such division of the library, and use the money arising from such sale in purchasing other law books or reports for such library.

SEC. 12. [**Books—Removal—Penalty!**—If either librarian shall permit or allow any person not authorized by this act to remove a book from the library, he shall be liable on conviction thereof, to pay a fine of not less than five nor more than fifty dollars for every book so taken.

SEC. 13. [**Same—Penalty.**—If any person not authorized by this act shall take a book from the library, either with or without the consent of the librarian, he shall, upon conviction thereof, be fined in any sum not less than ten nor more than fifty dollars for every book so taken.

SEC. 14. [**Distribution of publications to other states.**—The librarian of the law division of the state library is hereby authorized and required to send one copy each of all reports, session laws, journals of senate and house of representatives, and any other books and pamphlets hereafter published for the use of the state of Nebraska, to every one of the states, for the use of their respective libraries. [1871 § 1, 55.]



## CHAPTER 86.—STATE PENITENTIARY.

**SECTION 1. [Officers.]**—The officers of the penitentiary shall consist of one warden, who shall be the principal keeper of the penitentiary and clerk of the board of inspectors; one deputy warden, who shall be chief turnkey, and both of whom shall reside at the prison; one physician, and one chaplain, and such number of assistant keepers and guards as the warden and inspectors shall deem requisite. [1871 § 15, 29.]

**SEC. 2. [Warden.]**—The warden shall be appointed by the governor, by and with the consent and advice of the senate, and shall hold his office for the term of two years, and until his successor shall be appointed and qualified, unless sooner removed by the governor. [Id. § 16.]

**SEC. 3. [Other officers—Appointment.]**—The chaplain and physician shall be appointed by the board of inspectors, and shall hold their respective offices during the pleasure of the board; the deputy warden, and assistant keepers and guards shall be appointed by the warden, with the assent of the inspectors, and shall hold their office during the pleasure of the warden. [Id. § 17.]

**SEC. 4. [General oversight by board—Reports.]**—The inspectors, from time to time shall inquire into and examine all matters connected with the government, discipline, and police of the penitentiary, the punishment and employment of the prisoners confined therein, and they may, from time to time, require reports from the warden in relation to any and all of said matters. [Id. § 18.]

**SEC. 5. [Same.]**—They shall inquire into any improper conduct alleged to have been committed by the warden, or any other officers of the penitentiary and for that purpose the president of the board has power to issue subpoenas to compel the attendance of witnesses and the production of papers and writings before them, in the same manner, and with like effect, as in cases of arbitration. [Id. § 19.]

**SEC. 6. [Same—Examine witnesses.]**—The inspectors may examine any witnesses who appear before them on oath to be administered by the president of the board, or, in his absence, by any other inspector. [Id. § 20.]

**SEC. 7. [Inspection by board.]**—The warden and other officers of the penitentiary, at all times shall admit the inspectors, or either of them, into every part of said penitentiary, exhibit to them, or either of them, on demand, all the books, papers, accounts and writings pertaining to the penitentiary, or to the business, government, discipline or management thereof, and render them every other facility in their power to enable them to discharge their duties under this title. [Id. § 21.]

**SEC. 8. [Officers furnished copy of rules.]**—A printed copy of the rules and regulations of the penitentiary shall be furnished to every officer and guard of said penitentiary, at the time he is appointed and sworn. [Id. § 24.]

**SEC. 9. [Warden's daily journal.]**—The warden or deputy warden shall keep a daily journal of the proceedings of the penitentiary, in which he shall note all infractions of the rules and regulations of the penitentiary, by any officer or guard thereof, and make a memorandum of every complaint made by any convict of cruel or unjust treatment by any officer of the penitentiary, or a want of proper clothing or food, and also any infraction of the rules and regulations of the penitentiary by any prisoner, naming him and specifying the offense, and also what punishment, if any, was awarded; which journal shall be laid before the inspectors at every stated meeting, and at every special meeting, when demanded [Id. § 25.]

**SEC. 10. [Report to governor.]**—The inspectors, on the first Monday or December annually, shall audit, correct and settle the accounts of the warden with the prison and the state, for the year ending on the last day of November preced-

NOTE.—"An act to provide for the erection of a penitentiary and for the care and custody of state convicts." Laws 1870, 25. Took effect March 4, 1870. All the provisions of the original act providing for the erection of building, sale of lands granted by U. S., duties of original inspectors, and subsequent acts relating to taxes, are omitted. Duties of inspectors now devolves on board of public lands and buildings.

SEC. 3. The power of appointment and removal under Const. 1875 vests in the governor. 7 Neb. 44.

ing, and make report of the same immediately to the governor, which report must embrace and exhibit all particulars necessary to give the governor a full understanding of the fiscal year and all other matters pertaining to the management of the prison, and they shall at the same time furnish an estimate of the probable income and expense of the penitentiary for the ensuing year. [Id. § 26.]

SEC. 11. [**Prison library.**—They shall appropriate annually, out of the fees received from visitors, or from other funds of the penitentiary, a sum not less than twenty-five dollars, to be expended in the purchase of books or periodicals for the use of the prison library. [Id. § 28.]

SEC. 12. [**Salaries of officers.**—There shall be paid to the officers of the prison the following yearly salaries and compensation, to be paid quarterly out of the state treasury, on the warrant of the auditor, to wit: To the warden, the sum of fifteen hundred dollars; to the deputy warden, the sum of nine hundred dollars; to the inspectors, the sum of five dollars per day for each day actually and necessarily employed in the discharge of their duty; to the chaplain, and physician, and assistant keepers, and guards, such sums as the board of inspectors deem proper and just. [Id. § 29.]

SEC. 13. [**Warden—Duties.**—The warden shall attend constantly at the penitentiary, except when performing some other duty connected with his office; he shall exercise general supervision over and give necessary directions to the keepers and guards, examine whether they have been vigilant in the discharge of their respective duties, examine daily into the health of the prisoners, and take charge of the real and personal estate belonging to or connected with the penitentiary. [Id. § 31.]

SEC. 14. [**Same—Transactions—Suits.**—All the transactions and dealings of the prison shall be conducted in the name of the warden, who shall be capable in law of suing and being sued in all courts and places, in all matters concerning the said prison, by his name of office, and by that name he is hereby authorized to sue for and recover all sums of money, or any property due from any person to any former warden of said prison, or to the people of this state, on account of said penitentiary. [Id. § 32.]

SEC. 15. [**Convicts employed by officers.**—No officer of the penitentiary shall employ the convicts on a work in which he or any other officer has a personal interest, nor be connected, nor have any interest in the business or shops belonging to the penitentiary. [Id. § 33.]

SEC. 16. [**Warden—Accounts of moneys.**—The warden shall keep a regular and correct account of all moneys received by him from every source by virtue of his office, including all moneys taken from convicts, or received from proceeds of property taken from them, and of all moneys paid by him, and the person to whom, and the purpose for which the same were paid; and shall make out and deliver to the inspectors quarterly, a statement duly verified, of all moneys received and paid by him on account of the penitentiary, specifying from whom and to whom made, and on what account, and the balance remaining in his hands at the time of rendering of said account. [Id. § 39.]

SEC. 17. [**Same.**—The warden shall annually, on the last day of November of each year, close his accounts, and on or before the fifth day of December next thereafter render to the auditor of state a full and true account of all moneys received by him, and of all moneys expended by him on account of the penitentiary, with sufficient vouchers therefor, which account shall be duly verified by the warden. [Id. § 40.]

SEC. 18. [**Report of transactions.**—He shall annually, on or before the third day of December in each year, make and deliver to the inspectors of the penitentiary a report exhibiting a complete and detailed statement of the transactions of the penitentiary during the year preceding, stating the number of convicts confined therein, and all other matters relating to the same, and the management thereof. [Id. § 41.]

SEC. 19. [**Report of convicts pardoned.**—He shall report to the secre-

tary of state on the first Monday of December in each year, the names of all the the convicts pardoned the preceding year, the county in which they were tried, and the term for which they were sentenced. [Id. § 42.]

SEC. 20. [**Discipline.**—When any convict offers violence to any officer or guard of the penitentiary, or to any other person or convict, or attempts to do any injury to the buildings or any workshop, or to any appurtenances thereof, or disobeys and resists any reasonable command of any officer or guard, such officers and guards shall use all reasonable means to defend themselves, and to enforce the observance of discipline. [Id. § 48.]

SEC. 21. [**Same—Resisting authority.**—If any convict resists the authority of any officer, keeper, or guard of the penitentiary, or refuses to obey any lawful command, such officer, keeper, or guard shall immediately enforce obedience, by the use of such weapons or other aid as may be necessary for the purpose, and if in so doing any convict thus resisting shall be necessarily wounded or killed by such officer or his assistants, such officers or assistants are justified and shall be held guiltless. [Id. § 44.]

SEC. 22. [**Sickness—Removal of convicts.**—In case any pestilence or contagious disease breaks out among the convicts in the penitentiary, the inspectors and warden may cause such convicts to be removed to some secure and suitable place where such sick shall receive all necessary care and medical attendance. [Id. § 45.]

SEC. 23. [**United States prisoners.**—The warden shall receive, safely keep and subject to the discipline of the penitentiary any criminal convicted of any crime against the United States, and sentenced to confinement therein by any court of the United States sitting within this state, until such sentence is executed, or until such convict is discharged by due course of law, the United States supporting such convict and paying the expenses of executing such sentence. [Id. § 46.]

SEC. 24. [**Property of convicts—Sale.**—He shall take charge of any property that convicts may have at the time of entering the penitentiary, and if the same is of the value of five dollars or more, may sell the same with the consent of the convict, and place the proceeds at interest for the benefit of such convict or his representatives when he may leave the penitentiary, keeping a correct account of such property and the proceeds thereof. [Id. § 47.]

SEC. 25. [**Discharged convicts—Clothing, etc.**—When any convict is discharged from prison, the warden shall furnish such convict with a decent suit of clothes (if he is not already provided for), at the expense of the state, and shall pay such convict from any funds belonging to the penitentiary, a sum not exceeding ten dollars; and shall deliver to said convict, any property received from him which has not been disposed of according to law. The warden shall furnish, at the expense of the state, a bible to each convict who can read. [Id. § 42.]

SEC. 26. [**Separate cells.**—When there are cells sufficient, each prisoner shall be confined in a separate cell. [Id. § 49.]

SEC. 27. [**Clothing—Food.**—The clothing and bedding for the convicts shall be of coarse material, and they shall be supplied with a sufficient quantity of substantial and wholesome food. [Id. § 50.]

SEC. 28. [**Information to or from convicts.**—No person shall, without the consent of the warden, bring into or carry out any writing, or any information, to or from any convict. [Id. § 51.]

SEC. 29. [**Visitors.**—The following persons shall be allowed to visit the penitentiary at pleasure: The governor, members of the legislature, all state officers, and regularly authorized ministers of the gospel, but no other person shall go within the walls of the penitentiary, without the special permission of the warden. [Id. § 52.]

SEC. 30. [**Copy of convict's sentence.**—When any convict is delivered to the warden, the officer having such prisoner in charge, shall deliver to the warden a certified copy of the sentence received by such officer from the clerk of

the court where such convict was tried, and shall take from the warden a certificate of the delivery of such convict, and such certified copy of the sentence shall be evidence of the facts therein contained. [Id. § 53.]

SEC. 31. [**Escapes—Reward.**]—When any convict escapes from the penitentiary, the warden shall use all proper means for the apprehension of such convict, and for this purpose he shall offer a reward not to exceed one hundred dollars, and not less than twenty-five dollars; *Provided*, That if such escape was by reason of the negligence of the warden, or any officer under him, the reward shall be paid by the warden. [Id. § 54.]

SEC. 32. [**Same—Payment.**]—All suitable rewards and other sums of money paid for advertising any convict, shall be approved by the board of inspectors, and paid out of the state treasury. [Id. § 55.]

SEC. 33. [**Conveying prisoners—Fees.**]—The expenses and legal fees of sheriffs and other officers, incurred in conveying convicts to the penitentiary, shall be approved by the auditor of state, and paid out of the state treasury; and auditor may allow for said expenses and fees, the following rates: for sheriff, three dollars per day; for each assistant or guard absolutely necessary, two dollars per day, and ten cents per mile for traveling expenses in going and coming. [Id. § 56.]

SEC. 34. [**Liquors.**]—No spirituous or fermented liquors shall be, under any pretense whatever, brought into or upon the premises of the prison, except by the direction of the prison physician. [Id. § 57.]

SEC. 35. [**Expenses, how paid.**]—The auditor of state is authorized and required to draw his warrant on the state treasury for such sums as the inspectors may from time to time direct, for defraying the proper and necessary expenses of the prison. [Id. § 58.]

SEC. 36. [**Visitors—Rules.**]—It shall be lawful for the inspectors to establish uniform rules and fees for the admission of visitors within the prison. [Id. § 59.]

SEC. 37. [**Officers exempt as military and jurors.**]—The warden, deputy warden, inspectors, physician, assistant keepers, and guards shall be exempt from military and jury duties while actually employed by the state as such officers. [Id. § 60.]

SEC. 38. [**Absence of warden.**]—Whenever there is a vacancy in the office of warden, or the warden is temporarily absent, all the duties of warden shall devolve upon and be performed by the deputy warden until the vacancy is filled or the warden returns. [Id. § 62.]

SEC. 39. [**Physician—Duties.**]—The physician shall keep a register of all convicts placed under his care; the disease with which they are afflicted; also, of the death of any convicts, stating their names, age, time and cause thereof. [Id. § 63.]

SEC. 40. [**Records are public property—Copies.**]—All books, accounts, documents, registers, and reports shall be deemed public property, of which the warden shall preserve at least one copy of each. [Id. § 64.]

SEC. 41. [**Warden—Record of discipline.**]—The warden shall cause to be kept a record of each and all infractions of the rules and discipline by convicts, with the name of the convict offending, and the date and character of each offense, which record shall be placed before the inspectors at each regular meeting of the board. [Id. § 65.]

SEC. 42. [**Warden's quarters.**]—The warden is entitled to the use of the house built for him, and the necessary fuel and light for the same, to be supplied from the common stock of the prison, free of charge. [Id. § 66.]

SEC. 43. [**Lease—Prisoners constantly employed.**]—Every lease made of any or all the prison shops and fixtures shall contain a provision for the constant employment of all convicts in the penitentiary during the continuance of such lease. [Id. § 67.]

SEC. 44. [**Official vacancies—Appointment.**]—In all cases of vacancy in any office of the penitentiary, the governor shall fill the vacancy by appointment. [Id. § 69.]

SEC. 45. [**Warden—Monthly report.**]—That the warden of the peniten-

tiary be, and he is hereby directed and required to make, on the first Wednesday of each month, a complete detailed report to the board of prison inspectors, which report shall show the whole number of prisoners confined in said prison on the first day of the preceding month; number received during the month; number whose term expired during the month; number pardoned during the month; number escaped and still at large; number escaped and recaptured; number died, if any, during the month; number in prison on the last day of the month; number of prisoners under contract, to whom contracted and for what price. [G. S. § 81, 1046.]

SEC. 46. [Same.]—The warden shall also, at the same time, make a detailed statement of all receipts, showing the source from which the same was derived, and of all expenditures, with the proper vouchers for each item, the same to be kept on file by the inspectors and embraced in their annual report to the governor. All certificates certified to by the warden on account of expenditures, for care and custody of prisoners, shall be signed and certified by at least two of the inspectors before the auditor shall issue his warrant upon the treasurer for the same. [Id. § 82.]

SEC. 47. [Foreign convicts.]—That the lessee of the penitentiary and convict labor of this state be, and is hereby authorized to receive into the penitentiary and grounds, and to retain in custody under the discipline and government of the officers of said penitentiary, persons convicted of crimes and sentenced to confinement by the courts of the United States, and of any of the territories of the United States; *Provided*, That the reception and custody of such convicts shall not interfere in any manner with the comfort or safe keeping of any person sentenced to confinement in said penitentiary by the courts of this state; *Provided further*, That no such prisoner shall be received or retained in said penitentiary after January 1st, 1884, nor shall the state of Nebraska be liable in any manner on account of the receiving or retaining of any such prisoners. [1879 § 1, 169.]

SEC. 48. [Lease extended—Conditions.]—That the contract leasing to W. H. B. Stout, the penitentiary, penitentiary grounds, and convict labor, executed the 22d day of September, 1877, be and the same is hereby extended for the period of six years from the first day of October, 1883; *Provided*, The said Stout shall build and erect in a good and substantial manner, at his own expense, for the use of the state, and turn the same over to the state, free of charge, October 1, 1886, two hundred and forty stone cells, eighty of which cells shall be completed within nine months from the time this act shall take effect, and the remainder of said two hundred and forty cells shall be completed by the first day of October, 1883; all of said cells to be built of good natural stone, and similar to and equal in quality to those now in use in said penitentiary; *And, provided*, The said Stout shall only receive forty-five cents in cash, or its equivalent, per day, for each convict for the first three years, of said extended lease, viz: from the first day of October, 1883, to the first day of October, 1886, and forty cents per day for each convict, in cash or its equivalent, for the second three years of said extended lease, viz: from October 1st, 1886, to October 1st, 1889; *And, provided*, That after the first day of January, 1880, there shall be provided for each and every Nebraska prisoner one cell; *And, provided further*, That after January 1st, 1884, there shall only be kept at said penitentiary Nebraska prisoners. [1879 § 1, 166.]

## CHAPTER 87.—STATE UNIVERSITY.\*

SECTION 1. [Name—Establishment.]—That there shall be established in this state an institution under the name and style of "The University of Nebraska." [1869 § 1, 172. G. S. 1049.]

SECS. 45-6. "An act to require the warden of the penitentiary to make a detailed monthly report to the inspectors." G. S. 1046. Took effect April 1, 1873.

SEC. 47. "An act to authorize the lessee of the state penitentiary and grounds to receive and retain the custody of prisoners sentenced to confinement by the courts of the United States, and of the territories of the United States." Laws 1879, 169. Took effect June 1, 1879.

SEC. 48. "An act extending the contract for the leasing of the penitentiary, penitentiary grounds, and convict labor to W. H. B. Stout, upon certain conditions." Laws 1879, 166. Took effect June 1, 1879.

\*NOTE.—"An act to establish the university of Nebraska." Laws 1869, 172. Chap. 78, G. S. 1049. Took effect Feb. 15 1869. Secs. 5 and 9 of original act were repealed 1877, 59, and are omitted.

SEC. 2. [**Object.**—The object of such institution shall be to afford to the inhabitants of this state, the means of acquiring a thorough knowledge of the various branches of literature, science and the arts.]

SEC. 3. [**Government—Board of regents.**—The general government of the university shall be vested in a board of six regents, elected by the electors of the state at large, according to the provisions of the constitution of 1875. Vacancies occurring in the board between one general election and another, may be filled by the governor: *Provided always*, That any person thus appointed to fill a vacancy shall hold his office until the next general election succeeding his appointment, and no longer. [Amended 1877, 56.]

SEC. 4. [**Board of regents—Powers.**—The board of regents shall have full power to appoint their own presiding officer and secretary. And they shall constitute a body corporate to be known as "The regents of the university of Nebraska," and as such may sue and be sued, and may make and use a common seal, and alter the same at pleasure. They may acquire real and personal property for the use of the university, and may dispose of the same whenever the university can be advantaged thereby; *Provided*, They shall never dispose of grounds upon which buildings of the university are located, without consent of the legislature. [Amended 1877, 56.]

SEC. 5. [**Chancellor, professors, etc.**—The regents shall have power, and it is hereby made their duty to enact laws for the government of the university, to elect a chancellor, who shall be the chief educator of the institution, and the prescribed number of professors and tutors, and a steward; to prescribe the duties of all the professors and officers, and to fix their compensation. They shall have power to remove any professor or officer, but only upon the proof of written charges, and after affording to the person complained against an opportunity for defense. [1869 § 6. 172.]

SEC. 6. [**Colleges.**—The university may embrace five departments, to wit: *First*. A college of literature, science and art. *Second*. An industrial college, embracing agriculture, practical science, civil engineering and the mechanic arts. *Third*. A college of law. *Fourth*. A college of medicine. *Fifth*. A college of the fine arts. [Id. § 7. Amended 1877, 56.]

SEC. 7. [**Chairs of instruction.**—The regents shall be empowered to establish in these several colleges such chairs of instruction as may be proper, and so many of them as the funds of the university may allow. They shall also be authorized to require professors to perform duties in more than one of the several colleges, whenever they shall deem it wise and proper so to do. [Id. § 8. Amended 1877, 57.]

SEC. 8. [**Model farm—Lands.**—The governor shall set apart two sections of any agricultural college land, or saline land, belonging to the state, and shall notify the state land commissioner of such reservation, for the purpose of a model farm, as a part of the college of agriculture; and such land, so set apart, shall not be disposed of for any other purpose. [Id. § 10.]

SEC. 9. [**Location.**—The several buildings of the university shall all be erected within a radius of four miles from the state house. [Id. § 11.]

SEC. 10. [**Tutors.**—The regents shall, when the number of students in any particular branch shall require, elect one or more tutors to give instruction in such branch of study; but such tutors shall not be considered as belonging to the faculty of the college in which they may be employed. [Id. § 12.]

SEC. 11. [**Colleges—Government.**—The immediate government of each college shall be by its own faculty, which shall consist of the professors therein, but no course of study shall be adopted, or series of text books used, without the approval of the board of regents. [Id. § 13.]

SEC. 12. [**Degrees—Diplomas.**—The board of regents shall have exclusive

SEC. 3. The regents may sue and be sued in matters over which express authority is given the corporation; but cannot maintain an action to recover funds belonging to the university. 5 Neb. 429.  
SEC. 5. See sec. 23, passed subsequent to this section, page 515.

authority to confer degrees and grant diplomas, but each college may, in its discretion, grant rewards of merit to its own students. No student shall, upon graduation, receive any diploma or degree, unless he shall have been recommended for such honor by the faculty of the college in which he shall have pursued his studies. The regents shall also have power to confer the usual honorary degrees upon other persons than graduates of this university, in recognition of their learning or devotion to literature, science, or art; but no degree shall be conferred in consideration of the payment of money or other valuable thing. [Id. § 14.]

SEC. 13. [**Admission of pupils—Fees—Library fund.**].—The fee of admission to any college in the university shall be five dollars each for all persons; and the amount arising therefrom, together with all other tuition fees, shall be paid into the hands of the university treasurer, and shall be held as a library fund, and the board of regents shall annually appropriate the same for the purchase of books for the university library. A reasonable course of study, precedent to admission, shall be prescribed by the board of regents, and no applicant who shall fail to pass an examination in any part of such course shall be admitted; *Provided*, Any person who shall produce a certificate from a county superintendent of common schools, that he has passed honorably through the course of study prescribed in a high school, under the common school laws of the state, may be admitted without further examination. [Id. § 15. Amended 1873, G. S. 1053.]

SEC. 14. [**Tuition, when free.**].—All persons residing within the state, or, being non-residents, who pay, or whose parents or guardians pay not less than thirty dollars annually of school taxes to the state, and who shall fill the requirements of the preceding section, may be admitted to any organized college of the university, and shall not be required to pay any other tuition fee than the matriculation fee during the term of four years. All other students, and all who elect to remain under instruction for a longer term than four years, shall be required to pay such fees as the board of regents may determine. [Id. § 16.]

SEC. 15. [**Text books—Aid to students.**].—The regents shall procure all text books to be used in the university, and shall furnish them to students at cost. The regents may, upon proper evidence of the good character of any student, and his or her ambition to acquire an education, and inability to provide his or her own means therefor, donate to such student all text books he or she may need, and, by a two-thirds vote, may appropriate money to pay other expenses for such student; *Provided*, Such student will render an immediate equivalent in personal service for such appropriation, or give a sufficient obligation that he or she will reimburse the regents within five years. [Id. § 17.]

SEC. 16. [**Students—No distinctions.**].—No person shall, because of age, sex, color, or nationality, be deprived of the privileges of this institution. Provisions shall be made for the education of females apart from male students, in separate apartments, or buildings; *Provided*, That persons of different sexes, of the same proficiency of study, may attend the regular college lectures together. [Id. § 18.]

SEC. 17. [**Scientific courses—Attendance.**].—The regents shall provide a rule for attendance upon the agricultural college, and civil engineering, and scientific courses, by persons whose employments are such as to allow of their pursuit of study only a portion of the year. [Id. § 19.]

SEC. 18. [**Regents' report.**].—The board of regents shall, at least ten days prior to the meeting of each regular session of the legislature, transmit to the governor, to accompany his message, a printed report of all their doings since their last report, giving in detail all receipts and expenditures of money, and furnishing an estimate for future income and expenses, a catalogue of professors, officers and students for the year, with such other information and recommendations, as will apprise the legislature fully of the conditions and wants of the university. [Id. § 20. Amended 1877, 57.]

SEC. 19. [**Funds.**].—The funds of the university shall be two, to wit: The endowment fund and the regents fund. The endowment fund shall be kept by

the treasurer in two accounts: *First*. That derived from the proceeds of the sale of lands donated to the state by the United States, "to establish and endow a state university," under the act of Congress, of April 19, 1864, in one account; and, *Secondly*, that derived from the proceeds of the sales of lands donated to the state by the United States, to provide colleges for the benefit of agriculture and the mechanic arts, in an act of Congress, approved July 2, 1862, in another account. To the funds received from these two sources, there shall be added to the first, two-thirds, and to the second, one-third of the proceeds of all lands, or of all moneys, acquired by donation or bequest, where other objects are not stated. All moneys received in any manner as part of the endowment fund shall be invested as fast as five hundred dollars shall accumulate, in such United States, or guaranteed state stocks, or registered county bonds, as will pay not less than seven per cent. annually; and the principal of such investments shall never be appropriated by the legislature, nor used by the regents, for any purpose whatever. The regents fund shall consist of the proceeds of the investment of the endowment fund, of the proceeds of the annual rental of university and agricultural college lands leased, of the matriculation and other fees paid by students, and a tax of three-eighths of one mill on the dollar valuation on the grand assessment roll of the state, which shall be levied in the year of 1877, and annually thereafter. The treasurer shall keep the fund in three accounts, to wit: The university account, the industrial college account, a general account. The first and second shall be exclusively for the payment of salaries in the various colleges, and the third account shall be for appropriations in the discretion of the regents (except as may be specifically provided for by law), for any purpose directly connected with the university. All moneys accruing to the regents fund are hereby appropriated to the use of the state university, to be disbursed according to the provisions of law. [Id. § 21. Amended 1877, 57.]

SEC. 20. [**Same—Treasurer.**].—The treasurer of the state shall be the custodian of the principal of the endowment fund of the university, and shall, with the advice of the governor and auditor, make the investments thereof as provided in section twenty-one\* of the act to which this is supplementary. He shall pay over monthly to the treasurer of the university, all moneys of the university derived from interest, state university tax, or other sources, which by the preceding section are made applicable to the regents fund, and take his receipt therefor. The regents shall, from the moneys carried to the general account of the regents fund, provide necessary furniture for the university building, and all apparatus and text books, and make an annual appropriation for books for a general library. The treasurer of the university shall pay out no moneys except upon a warrant drawn upon the secretary and countersigned by the president of the board of regents, and all warrants so drawn shall distinctly specify the object for which payment is thereby made, and the date of the resolution or order of the board of regents authorizing the draft; and the secretary shall keep a full record of all warrants drawn on the treasury of the university, and shall lay before every meeting of the board of regents, a detailed statement of all such warrants drawn subsequent to the preceding session of the board; *Provided*, No moneys belonging to the regents fund shall be applied in the construction of the university building; *Provided, further*, That no money arising from the endowment fund, shall be diverted from the purpose for which it was intended by act of congress granting the same. [Id. § 22. Amended 1870, 13.]

SEC. 21. [**Board of regents—Meetings—Compensation.**].—The regents shall meet at least twice in each year at the university building. They shall receive for their services no compensation, but they may be reimbursed their actual expenses incurred in the performance of their official duties. [Id. § 23. Amended 1877, 58.]

SEC. 22. [**Buildings—Plans.**].—No superstructural work upon any building for the university shall be commenced, until the designs and plans therefor shall

\*SEC. 18 this chapter. Treasurer of university abolished, see secs. 24, 25.



have been submitted to the board of regents, by the commissioners for public buildings, and the architect thereof shall be required, before allowing any such superstructure to be erected, to make such alterations in the plans and specifications as may be directed by a majority of the regents. [Id. § 24.]

SEC. 23. [**Powers—Chancellor—Professors.**].—The regents shall have power to enact laws for the government of the university; to elect a chancellor and the prescribed number of professors and tutors, and a steward; to prescribe the duties of all the professors and officers, and to fix the compensation. They shall have power to remove the chancellor, and any professor or tutor, when the interests of the university shall require it. [1875 § 2, 154.]

SEC. 24. [**Treasurer.**].—The office of treasurer of the university is hereby abolished, and the state treasurer is made custodian of the funds, to whom the present treasurer of the university shall turn over, within sixty days, all moneys, securities, books and papers pertaining to that office. [Id. § 3.]

SEC. 25. [**Disbursements.**].—Disbursements from the university fund shall be made by the state treasurer, upon warrants drawn by the auditor, who shall issue warrants upon certificates issued by the board of regents, signed by the secretary and president. All money accruing to the university fund is hereby appropriated to the use of the state university. [Id. § 4.]

SEC. 26. [**Matriculation fees—Library fund.**].—All matriculation fees received from students for admission to any college in the university, including the amount now in the hands of the board of regents, or in the hands of the state treasurer, and what may hereafter be received, shall be paid into the state treasury, and shall be held as an "university library fund," and the board of regents shall, from time to time, appropriate the same for the purchase of books for the university library. [1881 § 1, chap. 81.]

#### CHAPTER 88.—STATUTES.\*

SECTION 1. [**Take effect, when.**].—That every act passed by the legislature which contains no provisions as to the time when it takes effect, shall take effect and become a law from and after the first of next June. [G. S. 1056.]

SEC. 2. [**Repealed—Effect on actions.**].—Whenever a statute shall be repealed, such repeal shall in no manner affect pending actions founded thereon, nor causes of action not in suit that accrued prior to any such repeal, except as may be provided in such repealing statute.

SEC. 3. [**Repealed—Revivor of former laws.**].—Whenever a law shall be repealed, which repealed a former law, the former law shall not thereby be revived unless specially provided for.

#### CHAPTER 89.—SWAMP LANDS.†

##### ARTICLE I.—DRAINAGE BY COUNTY AUTHORITIES.

SECTION 1. [**Power of county board over ditches.**].—The board of commissioners of any county may, at any regular or special session, cause to be located and constructed, straightened, widened, altered or deepened, any ditch, drain or water course, as hereinafter provided, when the same is necessary to drain any lots, lands, public or corporate road or railroad, and will be conducive to the public health, convenience or welfare. [1881 § 1, chap. 51.]

SEC. 2. [**"Ditch" defined—Outlet.**].—The word "ditch," as used in the act, shall be held to include a drain or water course. The petition for any such im-

SECS. 23-5. "An act providing for the more efficient government of the state university and for the disposition of funds belonging thereto." Laws 1875, 154. Took effect Feb. 23, 1875. Sec. 1 of this act superseded by Sec. 10, Art. VIII. Const. and Sec. 3 this chapter. See 5 Neb. 428. 9 Id. 470.

SEC. 26. "An act to appropriate the matriculation fees of the university of Nebraska for the use and support of its library." Approved Mar. 3. Took effect June 3 1881.

\*NOTE.—"An act concerning the enacting and repealing of statutes." Chap. 79, G. S. 1056. Took effect Feb. 21, 1873. See 7 Neb. 125. 8 Id. 148.

†ART. I. "An act to provide for draining marsh or swamp lands in the state of Nebraska." Approved Feb. 28. Took effect June 1, 1881.

provement shall be held to include any side lateral spur or branch ditch, drain or water course necessary to secure the object of the improvement, whether the same is mentioned therein or not; but no improvement shall be located unless a sufficient outlet is provided.

SEC. 8. [**Public road or railroad improved.**].—When the proposed improvement will drain the whole, or any part of any public or corporate road or railroad, or will so benefit any such road that the traveled track or road bed thereof will be improved by its construction, there shall be apportioned to the county, if the road is a state or county road, or to the corporation, if a corporate road or railroad, a proper share of the costs and expenses thereof, as hereinafter provided.

SEC. 4. [**Petition—Bond.**].—A petition for any such improvement shall be made to the board of commissioners of the county, signed by one or more owners of lots or lands which will be benefited thereby, which said petition shall be filed with the county clerk, and shall set forth the necessity of the proposed improvement, and describe the route and termini thereof with reasonable certainty, and shall be accompanied by a good and sufficient bond signed by two or more sureties, to be approved by the county clerk conditioned for the payment of all costs that may occur in case said board of county commissioners find against such improvement.

SEC. 5. [**Survey—Determination.**].—The county clerk shall deliver a copy of said petition to the board of county commissioners, at their next meeting, who shall thereupon take to their assistance a competent surveyor or engineer, if in their opinion his services are necessary, and at once proceed to view the line of the proposed improvement, and determine by actual view of the premises along and in the vicinity thereof, whether the improvement is necessary, or will be conducive to the public health, convenience, or welfare, and whether the line described is the best route, and they shall report their finding in writing, and order the clerk to enter the same on their journal.

SEC. 6. [**Routé changed.**].—If the commissioners, upon actual view, find that the route proposed is not such as to best effect the object sought, they shall change the same and establish the route and determine the dimensions of the proposed improvements; *Provided*, Any change so made shall not in any case exceed one hundred and sixty rods from the route described in the petition.

SEC. 7. [**Surveyor—Plat—Estimate—Report.**].—If the board of commissioners find for the improvement they shall cause to be entered on their journal an order directing the county surveyor, or an engineer, to go upon the line described in said petition or as changed by them in accordance with section six, and survey and level the same and set a stake at every hundred feet, numbering down stream; note the intersection of section lines, road crossings, boundary lines, precinct and county lines and make a report, profile, and plat of the same, and estimate the number of cubic yards for each working section as hereinafter provided.

SEC. 8. [**Schedule of lands benefited—Estimate of construction.**].—The commissioners shall also by their order direct the surveyor or engineer to make and return a schedule of all lots, lands, public or corporate roads or railroads that will be benefited by the proposed improvement, whether the same are abutting upon the line of the proposed improvement or not, and an apportionment of a number of lineal feet and cubic yards to each lot, tract of land, road or railroad, according to the benefits which will result to each from the improvement, and an estimate of the cost of location and construction to each, and a specification of the manner in which the improvement shall be made and completed.

SEC. 9. [**Plat and report—Contents.**].—The plat provided for in section seven shall be drawn upon a scale sufficiently large to represent all the meanderings of the proposed improvement, and shall show the boundary lines of each lot, or tract of land, and of each road or railroad to be benefited thereby, the name of the owner of each lot or tract of land as it then appears on the tax duplicate,

the authority or company having in charge or controlling each public or corporate road or railroad, the distance in feet through each tract or parcel of land, and such other matters as the surveyor or engineer deems material. The profile shall show the surface, the grade line, and the gradient fixed, and the surveyor or engineer shall file his report with the county clerk within thirty days after making the survey and level.

**SEC. 10. [Notice of hearing.]**—Upon the filing of the report of a surveyor or engineer, the county clerk shall, without delay, fix a day for the hearing of the same, which shall not be more than forty days from the time of the filing of said report and shall prepare a notice in writing, directed to the resident lot or land owners, and to the authorities or municipal or private corporations affected by the improvement, setting forth the pendency, substance, and prayer of said petition, together with a tabular statement of the apportionment as made by the surveyor or engineer in his report, and shall deliver the same to the sheriff, who shall serve a copy of the same upon each resident lot or land owner, and each member of such public board or authority, and upon an officer or agent of such private corporation, at least ten days before the time fixed for said hearing; *Provided*, Said copies need contain only so much of the original notice as affects the interests of the person so served; and the county clerk shall in like manner notify each non-resident lot or land owner, or by publication in a newspaper printed, and of general circulation in the county, for at least three consecutive weeks before the day set for the hearing, which said notice shall be verified in the manner now provided by law for the verification of notices by publication.

**SEC. 11. [Hearing.]**—The county commissioners shall meet at the office of the county clerk on the day fixed for the hearing, and shall first determine whether the requisite notice has been given. If they find that due notice has not been given, they shall continue the hearing to a day to be fixed by them, and order the notices to be served as hereinbefore provided, and when they find that due notice has been given, they shall examine the report of the surveyor or engineer, and the apportionment made by him, and if it is in all respects fair and just, according to benefits, they shall approve and confirm the same; but if they find said apportionment to be unfair or unjust, they shall so order and so amend it as to make it fair and just according to benefits.

**SEC. 12. [Application for compensation.]**—At any time before the day set for hearing, after persons are notified as provided in section eleven, any person or corporation, whose lands are taken or affected in any way by the improvement, may make application to the commissioners in writing for compensation and damages, and a failure to make such application shall be held as a waiver of all right thereto.

**SEC. 13. [Allowance of compensation.]**—The commissioners on actual view of the premises, shall fix and allow such compensation for land appropriated, and assess such damages as will in their judgment accrue from the construction of the improvement to each person or corporation making application as provided in section twelve, and without such application, to each idiot, insane person, or minor owning lands taken or affected by such improvement.

**SEC. 14. [Exceptions—Hearing.]**—A person or corporation party to the proceedings, may file exceptions to the apportionment, or to any claim for compensation or damages at any time before the time set for the final hearing of the report and apportionment. The commissioners may hear testimony and examine witnesses upon all questions made by the exceptions, and for that purpose may compel the attendance of witnesses by subpoena, which the county clerk shall issue on demand, and their decisions on the exceptions shall be entered on their journal, and if they sustain the exceptions the cost of the hearing thereon shall be paid out of the county treasury, and if they overrule the same such costs shall be paid by the person or corporation filing the same.

**SEC. 15. [Appeal from decision.]**—Any person or corporation feeling aggrieved thereby, may appeal to the district court within and for the proper

county from any final order or judgment of the commissioners made in the proceedings and entered upon their journal determining either of the following matters, to wit: *First*. Whether said ditch will be conducive to the public health, convenience or welfare. *Second*. Whether the route thereof is practicable. *Third*. The compensation for land appropriated. *Fourth*. The damage claimed to property affected by the improvement, which appeal may be taken and prosecuted in the manner provided by law for appeals from the decision of the county board on claims against the county.

**SEC. 16. [Effect of appeal on work—Bond.]**—No appeal taken in pursuance of the provisions of section fifteen shall in any manner affect the progress of the construction of the proposed improvement; *Provided*, The petitioners shall enter into a good and sufficient bond to be approved by the said district court as [or] by the judge thereof at chambers, and filed with the clerk of said court, conditioned for the payment of all damages and costs that the appellant may sustain on the trial of said appeal.

**SEC. 17. [Transcript on appeal.]**—The clerk of the district court, immediately after the close of the term at which the appeal is tried, as provided for in the preceding section, shall certify to the board of county commissioners a full and complete transcript of the proceedings had upon such appeal in said district court, and the commissioners shall make such entry on their journals as may be necessary to give effect to the judgment of the district court.

**SEC. 18. [Bids for construction—Contract.]**—Immediately after the transcript mentioned in the preceding section is returned to the county clerk, or immediately upon the filing of the bond mentioned in section sixteen, or in case there is no appeal as hereinbefore provided, then immediately after the hearing of the report mentioned in section eleven, the commissioners shall proceed to advertise for sealed bids for the construction of said ditch in working sections not less in extent than the number of lineal feet apportioned to each lot or tract of land, public or corporate road or railroad, and shall fix a time when said bids will be opened, giving not less than twenty days notice thereof, and they shall attend at the time and place of opening the bids, and shall let the contract or contracts to the lowest responsible bidder, and shall take good and sufficient security for the faithful performance of such contract or contracts, and they shall fix the time for the completion of each contract, not exceeding in any case one hundred and fifty days from the time of entering into the same, and no bid shall be entertained which exceeds the estimated cost of construction of the working section or sections upon which the bid is made.

**SEC. 19. [The supervision of work—Payment.]**—The work shall be done under the supervision of the surveyor or engineer appointed by the commissioners, and when a part not less than one-fourth of the portion included in any contract is completed according to the specifications, he shall give the contractor a certificate thereof, showing the proportional amount which the contractor is entitled to be paid according to the terms of the contract, and the county clerk shall, upon presentation of such certificate, draw his warrant upon the treasurer for seventy-five per cent. of said amount, and the treasurer will pay the same out of any funds in the treasury applicable to such purposes; *Provided*, That no proportional amounts shall be certified or paid unless the whole of such contract exceeds two thousand lineal feet.

**SEC. 20. [Incompleted contracts re-let.]**—Any contract not completed within the time specified, shall be re-estimated and re-let to the lowest responsible bidder, but not for a sum greater than the estimate, nor a second time to the same party; *Provided*, The commissioner may, for a good cause, extend the time of any contractor not to exceed one year.

**SEC. 21. [Assessment for cost and compensation.]**—When the working sections are let, as hereinbefore provided, and the cost and expenses of location and construction, and all compensation and damages are ascertained, the commissioners shall meet and determine at what time and in what number of as-

assessments they will require the same to be paid, and order that the assessments as made by them be placed on the duplicate tax list against the lots and lands so assessed.

**SEC. 22. [Same—Collection—Lien.]**—Where the commissioners make an assessment they shall cause an entry to be made directing the clerk to make and furnish to the treasurer a special duplicate, with the assessment arranged thereon, as required by their order. The clerk shall retain a copy thereof in his office, and all assessments shall be collected and accounted for by the treasurer; and in case such assessments, or any part thereof, are not paid by the party or parties owning or controlling the lots or lands against which such assessments are made in the manner contemplated by this act, such assessments shall be and remain a perpetual lien against the premises so assessed; and the county treasurer shall proceed to advertise and sell said lots and lands, or such portions thereof as shall be necessary to pay said assessments, together with the costs, in the same manner as real estate is now by law advertised and sold by him for the payment of delinquent taxes; and in case said assessments are not paid when due, there shall be added thereto a penalty of twelve per cent. on the amount of the same, and said amount and penalty shall draw ten per cent. interest until paid.

**SEC. 23. [Neglect of officers—Penalty.]**—Any officer mentioned in the act who shall neglect or refuse to perform any duty imposed upon him by the provisions of this act, shall forfeit and pay a fine of twenty-five dollars for every such offense, to be recovered before any court of competent jurisdiction in the name of the state of Nebraska, for the benefit of the common school fund of the county, at the suit of any person aggrieved thereby.

**SEC. 24. [Ditch in two counties.]**—When a ditch is proposed which will require a location in more than one county, application shall be made to the board of commissioners of each county so affected, and the surveyor or engineer shall make a report for each county. Application for damages shall be made, and appeals from the finding of the commissioners in joint session locating and establishing such ditch, and from the assessment of damages or compensation shall be taken to the district court in the county in which the lots or lands which are immediately affected are located. A majority of the commissioners of each county, when in joint session, shall be competent to locate and establish such ditch.

**SEC. 25. [Same—Tax.]**—The commissioners shall, if necessary, annually at their June session, levy a tax not exceeding one mill on the dollar of the assessed valuation of the county, sufficient to pay for the location and construction of such portions of the respective ditches located by them, or by the commissioners of two or more counties, as may be apportioned to the county, and they shall pay out of any fund applicable to such purpose any sum assessed upon land owned by the county.

**SEC. 26. [County ditch fund.]**—The board of county commissioners of any county in this state are hereby authorized whenever they deem it necessary to create a county ditch fund, to consist of taxes collected on county levies, and all balances remaining unexpended of special ditch funds arising from excess of assessments made on ditch improvements after the expenses thereof have been fully paid, and the commissioners are hereby authorized, whenever necessary, to borrow from the county general fund for the benefit of the above named ditch fund, and all moneys so borrowed shall be, as soon as practicable, returned to the county general fund.

**SEC. 27. [Obstructing ditch.]**—Whoever wilfully obstructs any ditch shall forfeit to the county in which such ditch is located the sum of twenty-five dollars, to be recovered before any court having competent jurisdiction in the name of the state, and shall moreover be liable in damages to the party injured.

**SEC. 28. [Irregularities—Injunctions.]**—The collection of assessments to be levied to pay for the location or construction of any ditch shall not be enjoined nor declared void; nor shall said assessment be set aside in consequence of any error or irregularity committed or appearing in any of the proceedings pro-

vided by this act, and no injunction shall be allowed restraining the collection of any assessment until the party complaining shall first pay to the county treasurer the amount of his assessment, which amount so paid may be recovered from the county in an action brought for that purpose in case such injunction is made perpetual.

**SEC. 29. [Repealed act of 1873, G. S. 1057.]**

**ARTICLE II.—DRAINAGE BY INCORPORATED COMPANIES.**

**SECTION 1. [Drainage companies—Organization.]**—That any number of persons, not less than three, being owners of lands wet or liable to be overflowed, may organize a company for the purpose of draining, reclaiming and protecting such lands, which shall have power to straighten, widen, deepen and make new channels for the whole or any part of any river, or water course, and to construct any dykes, drains, levees, and breakwaters, and to do everything which they shall deem proper to accomplish the purpose for which the company shall have been organized. [1877 § 1, 160.]

**SEC. 2. [Directors.]**—Such persons shall sign articles of association, specifying the name and purposes of the company, and shall elect from their number not less than three nor more than seven directors, of the time and place of which election the members shall be notified by notices signed by three members, and posted in three public places near the work five days before the election, but notice may be waived by the members. Vacancies in the offices of directors may be filled by the appointments made by the remaining members.

**SEC. 3. [Articles—Corporate powers.]**—Said articles of association shall be recorded in the county clerk's office of the several counties in which any part of the work shall be situated, and from the date of filing the same for record in either of such counties, such company shall be a body corporate, with all powers incident to such bodies and to consummate the purposes for which it was organized; and to buy, receive donations of, and hold, and sell and convey any lands benefited, or to be benefited, by the proposed work of the company; and any person owning land supposed to be liable to be affected by said work, may become a member of the company by signing the articles of association. The corporate existence of the company shall be judicially recognized, and the company's records shall be *prima facie* evidence of its acts.

**SEC. 4. [Annual election.]**—An annual election shall be held by the company at such time and place as the company shall appoint for the election of directors, of which twenty days notice shall be given by one week's publication in one newspaper of general circulation in each county in which any part of the work shall be situated, if such paper shall be printed and published in such county, and if there be none, then by posting notices in three public places near the work.

**SEC. 5. [Officers—Duties.]**—A majority of the directors shall form a quorum, and shall have control and management of the business and affairs of the company. They shall appoint one of their number president, and shall appoint a secretary, treasurer, and such other officers and agents as they may see fit; and all officers and agents shall be entitled to fair compensation for their services. The treasurer shall give bond to the company with proper penalties and sureties, for the faithful discharge of his duties, and the safe keeping and prompt payment, according to the orders of the board of directors, of all moneys that may come into his hands. The president, directors, secretary and treasurer shall hold their respective offices for one year, and until their successors shall be elected and qualified, and shall be sworn to the faithful discharge of their duties. The secretary may administer all official oaths.

**SEC. 6. [Appraisers—Appeal.]**—The company may apply to the district court, or county court, in term time, or to a judge thereof in vacation, of any

ART. II. "An act to authorize the construction of levees, dykes and drains, and the reclamation of wet and overflowed lands by incorporated companies." Laws 1877, 160. Took effect June 1, 1877.

county in which any part of the proposed work shall be situated, which court or judge, as the case may be, shall immediately appoint three disinterested appraisers, and such appraisers shall examine all lands, the intrinsic or market value of which may be by them supposed to be liable to be affected by the construction of the proposed work, or by the appropriation of all or any part of it for right of way or other purpose of the company, or of any stone, timber, gravel, or other material required by the company, and shall make out separate schedules in the smallest United States government subdivisions of all such lands situated in each county, and shall assess to each tract the full and entire amount of such benefit which it will, in the opinion of a majority of them, receive, without any regard to the cost of such work, and the injury which in the opinion of a majority of them it will sustain; and append to each schedule their affidavit that the same is a true assessment, and return the same to the secretary of the company, who shall cause it to be filed for record and recorded in the office of the county clerk of the county in which the land therein described shall be situated, and from the date of filing thereof such assessments shall respectively be a lien on the lands upon which they were assessed, for the amount of such assessments of benefits, less the amount of injury assessed. And when, and as often as it shall become necessary or desirable to re-assess any tract of land for the correction of any mistake, or to enable the company to appropriate any part of the same for right of way, or any stone, timber, gravel or other material for construction of the work; and whenever, and as often as it shall be desired by the company to make a re-assessment, of any tract or tracts of land for any purpose, said appraisers shall, upon request of the company, make such re-assessments, and so, from time to time, when, and as often as they shall be requested, and shall make and return schedules of the same, and such schedules shall be filed for record and recorded in the county clerk's office as aforesaid, and shall constitute liens, shall be collected, and shall in all respects be governed by the same rules, and have the same force and effect as the original assessments above provided for; and if any appraiser appointed as aforesaid shall die, resign or fail to act as such, when the interests of the company shall in the opinion of the president require it, his appointment as such appraiser shall thereby be vacated, and upon representation of such vacation to such court or judge by the president such court or judge shall, upon the application of the company, immediately fill such vacancy by the appointment of a like disinterested person, who shall qualify by and in the manner above provided, and the same shall be done when, and as often as the company may request; *Provided*, That upon filing such schedule for record, the secretary shall give notice thereof by posting a notice in a conspicuous place in the county clerk's office, and any party aggrieved by any such assessment may, within thirty days thereafter, appeal therefrom to the district court, or county court of said county; *And provided further*, That any person who is under legal disabilities at the time of the making and filing of such schedule, shall have the right of appeal as aforesaid at any time within thirty days after the removal of such disabilities; *And provided further*, That any two appraisers may perform all the services required by this section, and that all acts concurred in by any two, shall be valid, binding and effectual.

**SEC. 7. [Survey—Estimate of cost.]**—Before the actual construction of the work shall be begun, surveys of it, and estimates of its costs shall be made, and the appraiser's schedules of assessments returned to the secretary, and if the estimated cost of the work shall exceed the aggregate amounts of the assessments, the work shall not be further prosecuted.

**SEC. 8. [Work divided into sections.]**—Before the actual construction of the work shall be begun, the company shall divide the main line of their work into as many sections, of not exceeding six miles in length, as may be convenient, and each of such sections, with its auxiliaries, branches and tributaries, shall form a separate division of the work; and they shall also appropriate and set apart as applicable to, and hold the same inviolate for, the construction of each of such divisions respectively, a portion of their resources bearing the same ratio

to the whole of their resources properly applicable to the construction of the work, as the estimated cost of such division shall bear to the estimated cost of the whole work; and so much thereof as shall be necessary shall be applied for the purpose for which it was appropriated and set apart, and the surplus may be applied to other legitimate purposes of the company, and the work of construction shall be prosecuted as simultaneously upon the whole line as may seem to the directors consistent with proper economy.

**SEC. 9. [Notice to landowners.]**—The owners of land liable to be affected by the work of a company, shall have notice of the time and place, when and where the appraisers will begin the examination of lands and the assessment of benefits and injuries thereto, and of the order in which it shall be intended to proceed with the same, which notice need not specify what lands are to be examined or assessed, but may be general, and addressed to the public, and shall be sufficient if published for three successive weeks in a newspaper published in the county in which the lands are situated, and proof of its publication may be made by affidavit of the printer or publisher of the paper in which it is published, or of the secretary of the company.

**SEC. 10. [Assessments, how paid.]**—The board of directors may order the payment of said assessments in installments not exceeding ten per centum per month, and payment thereof shall be made to the treasurer in compliance with such order; *Provided*, That no more shall be collected than shall, in the opinion of the directors, be required for the legitimate purposes of the company in the prosecution of the work; *And provided further*, That unless the main line of the company's proposed work shall exceed twenty miles in length, no part of the assessments shall be collected by the company until the company shall have given bond, payable to the state of Nebraska, with surety approved by the clerk of the district court, or judge thereof, of a county in which the work, or some part of it, is situated, conditioned for the faithful application to the legitimate purposes of the company of all money which shall be received by them for the construction of the work, which bond shall be filed in the clerk's office of the district court in the county where it was approved and a copy thereof in the clerk's office of such court in each of the other counties in which any part of the work is situated; and any person or persons, aggrieved by any breach of the conditions of said bond shall have an action thereon in any court of competent jurisdiction for the recovery of all damages thereby sustained by him or them.

**SEC. 11. [Same—How enforced.]**—Payment of assessments of benefits may be enforced by foreclosure of the lien in any court of competent jurisdiction, in the same manner as is provided by law for the foreclosure of mortgages, and the sale of mortgaged premises for the collection of debts, and payment of damages assessed for injuries to lands may be enforced by an action in a like court.

**SEC. 12. [Appropriation of property.]**—The company may appropriate any land, stone, timber, gravel, or other materials necessary for the right of way, or the construction, maintenance or improvement of their proposed work, by first paying into the county treasury of the county where the land is situated, for the use of the owner of the land, the amount of damages assessed by said appraisers to him therefor.

**SEC. 13. [Bonds.]**—Any company where work shall be estimated to cost three thousand dollars or more, may issue their bonds, with or without coupons, not exceeding in the aggregate the estimated cost of their work, which bonds may each be of any denomination, and payable at any time and place, and bear any rate of interest not exceeding ten per centum per annum, payable annually or semi-annually, and may secure the payment thereof by pledge or pledges, or mortgage or mortgages, upon said assessments for benefits to lands or any part thereof, or any other property of the company; which pledges and mortgages may each provide for a sinking fund, for the gradual extinguishment of the debts, and such company may, from time to time, negotiate said bonds in any market or place, at any rate



of discount not exceeding ten per centum; and after any such bonds shall have been negotiated, no action or proceeding shall be instituted, nor any defense to any action be interposed by the company or any other person or persons, the object or tendency of which shall be to impair the validity or security, or to depress the value of such bonds, any provisions of law to the contrary notwithstanding.

**SEC. 14. [Foreclosure of lien.]**—After the expiration of three years from the recording of the appraiser's schedule of assessments in any county, no action shall be instituted to foreclose any lien on land situated in said county, unless the assessments secured by such lien shall have been pledged or mortgaged as security for one or more bonds then outstanding; and in such cases, no tract of land shall, after the lapse of said three years, be liable for more than its fair proportion of the assessments pledged or mortgaged as security for bonds of the company, and required for the extinguishment thereof.

**SEC. 15. [Irregularity of proceeding—Effect.]**—No informality, irregularity, or omission, which shall have occurred, or which may occur, in the organization or proceedings of any company, or in the appointment or proceedings of any of them, officers, agents, or the appraisers shall affect the rights and privileges of any such company, or invalidate the assessment of the appraisers, nor any sale of land which shall be made under any foreclosure of any lien for the assessment thereon; *Provided*, The amount of the assessment shall be clearly set forth in the appraiser's schedule, and the schedule shall have been duly recorded, and notice of the recording thereof given as hereinbefore provided,

#### CHAPTER 90.—TEN HOUR SYSTEM.\*

**SECTION 1.** Ten hours shall constitute one day's labor, so far as it concerns laborers and mechanics, throughout the state. [R. S. 879.]

#### CHAPTER 91.—TOWNS AND VILLAGES.

**SECTION 1. [Unclaimed lots.]**—That all persons who shall be or may become the owners of any equities of title, in and to any town lot or lots, or land within any incorporated town or city in this state, by virtue of which they shall be entitled to demand and receive, from the corporate authorities, a title in fee simple to the same, shall present their claims, and make demand for their deed, within sixty days from the passage of this act, in all those cases where the lot, lots or lands have already been unclaimed for the period of two years; and in all cases of sites of corporate towns or cities, which may be hereafter entered the property shall be claimed and the deed demanded within three years after such entry; *Provided*, That if any person shall neglect to comply with the terms of this act as aforesaid, the title in and to such realty shall vest in the corporation, as fully, and to all intents and purposes as though conveyed to said town or city by deed of general warranty. [1867 § 1, 94.]

**SEC. 2. [Not applicable to tax sales.]**—This act shall be construed to apply to rights acquired previous to the entry of the land; and in no case to rights of parties acquired by virtue of any tax sale. [Id. § 2.]

#### VACATING STREETS AND ALLEYS.

**SEC. 3. [Notice.]**—Any person seeking to have any street, alley or public grounds, in any town or village, vacated, shall give thirty days notice of the intended application therefor to the county commissioners for the vacation of such street, alley or public grounds, by posting five notices in as many of the most public places within the limits of the said town or village. Such notices shall contain a particular description of the street, alley or public grounds desired to be vacated,

\*NOTE.—Chap. LIII. R. S. 379.

SECS. 1-2. "An act to provide for the disposition of unclaimed lots entered in trust by corporate authorities." Laws 1867, 94. G. S. 1073. Took effect June 24, 1867.

SECS. 3-6. "An act to provide for vacating streets, alleys and public grounds in towns and villages." Laws 1871, 125. G. S. 1074. Took effect Mar. 10, 1871.

and the time at which the application will be made to the county board for the order of vacation. [1871 § 1, 125.]

**SEC. 4. [Board of examiners.]**—Upon the application of any person to the county board for the vacation of any street, alley or public grounds, proving by the oath of two persons that the foregoing section has been complied with, and by giving bond with sufficient security for all costs payable to the county, the board shall appoint three disinterested householders of the town or village, to examine the street, alley or public grounds, and at the next regular meeting of the board report whether in their opinion any injustice or inconvenience will be worked by the vacation of such street, alley or public grounds. The board, upon such report and other testimony presented by the applicant, or others opposing the vacation, shall decide for or against such vacation. [Id. § 2.]

**SEC. 5. [Decision.]**—The county board, if convinced that no injustice will be worked by any person or persons by such vacation, shall order such vacation, and in all cases they shall cause all expenses arising from the application and the ensuing proceedings to be paid by the party or parties applying for such vacation. [Id. § 3.]

**SEC. 6. [Title, in whom vested.]**—The street, alley or public grounds thus vacated, shall become the property of owners of real estate thereto adjacent, on each side, in proportion to the frontage of such real estate. The county clerk shall make a quit-claim deed, in the name of the county, to the different persons to whom such street, alley or public grounds may inure, signing said deed, and attaching the county seal thereto, and such deed shall convey all the title vested in the county. [Id. § 4.]

## CHAPTER 92.—WAREHOUSEMEN.

**SECTION 1. [Description of property.]**—Whenever any personal property shall be consigned to, or deposited with, any forwarding merchant, wharf keeper, warehouse keeper, tavern-keeper, or the keeper of any depot for the reception and storage of trunks, baggage, and other personal property, such consignee or bailee shall immediately cause to be entered in a book to be provided and kept by him for that purpose, a description of such property, with the date of the reception thereof.

**SEC. 2. [Notice to owner.]**—If such property shall not have been left with such consignee or bailee for the purpose of being forwarded or otherwise disposed of, according to directions received by such consignee or bailee, at or before the time of the reception thereof, and the name and residence of the owner of such property be known or ascertained, the person having such property in his custody shall immediately notify such owner, by letter to be directed to him and deposited in a postoffice to be transmitted by mail, of the reception of such property.

**SEC. 3. [Unclaimed property—Sale.]**—In case any such property shall remained unclaimed for three months after its reception as aforesaid, the person having possession thereof shall cause a notice to be published once in each week for four successive weeks, in a newspaper published in the same county, if there be one, and if not, then in some paper published at the seat of government, describing such property, and specifying the time when it was so received, and stating that unless such property shall be claimed within three months from the first publication of such notice, and the lawful charges thereon paid, the same will be sold according to the statute in such case made and provided.

**SEC. 4. [Same—Proceedings before justice.]**—In case the owner or person entitled to such property shall not, within three months after the publication of such notice, claim such property and pay the lawful charges thereon, including the expenses of such publication, the person having possession of the property, his agent or attorney, may make and deliver to any justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property is known or unknown.

SEC. 5. [**Same.**].—Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall make and annex to such inventory an order under his hand that the property therein described be sold by the sheriff of the county where the same shall be, at public auction, upon due notice.

SEC. 6. [**Notice.**].—It shall be the duty of the sheriff receiving such inventory and order, to give ten days notice of the sale by posting up written notices thereof in three public places in the county or city, and to sell such property at public auction for the highest price he can obtain therefor.

SEC. 7. [**Sheriff's return.**].—Upon completing the sale, the sheriff making the same shall endorse upon the order aforesaid a return of his proceedings upon such order, and the proceeds of the sale after deducting his fees, which shall be the same as upon an execution.

SEC. 8. [**Expenses.**].—From the proceeds of such sale the justice shall pay the charges and expenses legally incurred in respect to such property, or a rateable proportion to each claimant if there be not sufficient to pay the whole; and such justice shall ascertain and determine the amount of such charges in a summary manner, and shall be entitled to three dollars for each days services rendered by him in such proceeding.

SEC. 9. [**Avails—Disposition.**].—Such justice shall deliver to the treasurer of the county in which the property was sold, the affidavit, inventory, and order of sale and return hereinbefore mentioned, together with a statement of the charges and expenses incurred in respect to such property as ascertained and paid by him, with a statement of his own fees, and shall at the same time pay over to such treasurer any balance of the proceeds of the sale remaining after payment of such charges, expenses, and fees.

SEC. 10. [**Duties of treasurer.**].—The treasurer shall file in his office, and safely keep all the papers so delivered to him, and make a proper entry of the payment to him of any moneys arising from such sale, in the books of his office.

SEC. 11. [**Money paid to owner.**].—If the owner of the property sold, or his legal representatives, shall, at any time within five years after such moneys shall have been deposited in the county treasury, furnish satisfactory evidence of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount deposited with him.

SEC. 12. [**Money paid to school fund.**].—If the amount so deposited with any county treasurer shall not be paid to such owner, or his legal representatives, within the said five years, such county treasurer shall pay such amount into the school fund of the proper county, to be appropriated for the support of schools.

SEC. 13. [**Warehouse receipts—Negotiable—Lien—Record.**].—Any packer of pork or beef, or any manufacturer of distilled spirits, having a warehouse for the storage of his own product; and any keeper of an elevator where he stores his own grain, may issue receipts for his own meats, spirits, or grain which he actually has so stored, in the usual form of warehouse receipts, which shall have the same force and effect as the receipts issued by the keeper of a public warehouse, to parties having property so stored therein, which receipts shall be negotiable by endorsement, and entitle the *bona fide* holder thereof advancing money upon the credit of the same to a lien upon the property so stored and described therein for the money so advanced, as to all subsequent purchasers and creditors of any person interested therein from the issue of such receipts and the advance of such money; *Provided*, The said receipts, or a copy thereof verified by the oath of the holder of the same, be recorded in the office of the county clerk of the county in which such warehouse or elevator may be. [1879 § 1, 73.]

SEC. 14. [**Same—Fraudulent—Penalty.**].—If any person described in the preceding section shall execute and deliver, or cause to be executed and delivered to any other person, false, fraudulent or fictitious warehouse receipts, ac-

knowledge, or other instrument in writing to the effect that he had in store in his warehouse or elevator, meats, spirits or grain, whereas in fact he has not the same so stored, according to the purport or effect of said receipt, acknowledgment or writing; or, having issued his receipt therefor, as in the preceding section provided, shall remove the property described in such receipt without having first discharged the lien in said section provided, or without the written consent of the holder of such receipt endorsed thereon, with intent [intent] to deceive, or defraud, or injure any person whomsoever; or if any person shall endorse, assign, transfer or deliver to any other person any such false or fraudulent receipt, acknowledgment or instrument in writing, knowing the same to be false, fraudulent or fictitious, with the like intent [intent], such person shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment at hard labor for a term not more than three years, nor less than one year. [Id. § 2.]

#### CHAPTER 93.—WARRANTS.

**SECTION 1. [Warrants, when payable.]**—All warrants upon the state treasurer, the treasurer of any county, or any municipal corporation therein, shall be paid in the order of their presentation therefor. [1871 § 1, 113. G. S. § 1, 891.]

**SEC. 2. [Warrant register.]**—The treasurer of this state, and the treasurer of every county and every incorporated city or town therein, shall keep a warrant register, which register shall show, in columns arranged for that purpose, the number, date and amount of each warrant presented and registered as hereinafter provided, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the same is registered, the date of payment, the amount of interest and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered is mailed, as hereinafter provided.

**SEC. 3. [Warrant—Registration—Endorsement.]**—It shall be the duty of every such treasurer, upon the payment of a fee of ten cents by the holder of any warrant, or by any person presenting the same for registration, in presence of such person, to enter such warrant in his "warrant register," for payment in the order of presenting for registration, and upon every warrant so registered, he shall endorse "registered for payment," with the date of such registration, and shall sign such endorsement; *Provided*, That nothing in this act shall be construed to require the holder of any warrant to register the same, but such warrant may be presented for payment and endorsed, "presented and not paid for want of funds," and shall draw interest from the date of such presentation, as now provided by law.

**SEC. 4. [Separate package for each warrant—Notice.]**—It shall be the duty of every such treasurer to put aside in a separate and sealed package, the money for the payment of each registered warrant, in the order of its registration, as soon as money sufficient for the payment of such warrant is received to the credit of the particular fund upon which the same is drawn, such package shall be endorsed with the number and description of such warrant, and the name and address of the person in whose name the same is registered, and interest upon such warrant shall thereupon cease, and such treasurer shall by mail immediately notify the person in whose name the same is registered, and shall endorse the date of the mailing of such notice upon such sealed package.

**SEC. 5. [Treasurer's receipts for money paid.]**—The state treasurer shall make triplicate receipts, under the seal of his office, for all sums which shall be paid into the treasury, showing the amount paid in to the credit of each separate fund, in cash and in warrants separately, two of which receipts he shall deliver to the person making such payment, and the person making such payment

SECS. 1-12. "An act to prescribe the duties of the state treasurer, of the treasurer of counties and of other municipal corporations in certain cases, and to enforce their performance." Laws 1871, 113. Took effect May 1, 1871. Chap. 65, G. S. 891. Sec. 1, cited 10 Neb. 31.

shall deliver one of such receipts to the auditor who shall credit such person accordingly, and the treasurer shall retain one of said triplicates in his office.

**SEC. 6. [Receipts by county treasurer.]**—Every county treasurer shall make out triplicate receipts, for all sums which shall be paid into his office, which receipts shall show the source from which such funds are derived, and shall, by distinct lines and columns, show the amount received to the credit of each separate fund, and whether the same was paid in cash or warrants, county or road orders, or supervisors receipts; one of which triplicates the treasurer shall deliver to the person making such payment, and he shall within six days file with the county clerk, the third he shall retain in his office.

**SEC. 7. [Receipts by city treasurer.]**—The treasurer of every city or incorporated town, shall make duplicate receipts for all sums which shall be paid into his office, which receipts shall show the source from which such funds are derived, and shall by distinct lines and columns show the amount received to the credit of each separate fund, and whether the same was paid in cash, in warrants, or otherwise; one of which duplicates the treasurer shall deliver to the person making such payment, and the duplicate thereof he shall retain in his office.

**SEC. 8. [Treasurer's duties—Cash book—Register.]**—Every such treasurer shall daily, as moneys are received, foot the several columns of his cash book, and of his register, and carry the amounts forward, and at the close of each year, in case the amount of money received by such treasurer is insufficient to pay the warrants registered, he shall close the account for that year in such register, and shall carry forward the excess.

**SEC. 9. [Failure to keep books—Penalty.]**—Any such treasurer who shall fail regularly to enter upon his cash book the amounts so received and receipted for, or who shall fail to keep his cash book footed from day to day, as required by this act, for the space of three days, shall forfeit for each offense, the sum of one hundred dollars, to be recovered in a civil action on his official bond, by any person holding a warrant drawn on such treasurer, one-half to the person bringing such action, and one-half to the school fund of the county in which such action is brought.

**SEC. 10. [Inspection of books.]**—The cash book, register, and retained receipts of every such treasurer, shall at all times be open to the inspection of any person in whose name any warrants are registered, and unpaid.

**SEC. 11. [Failure to notify—Penalty.]**—Any treasurer who shall for the period of five days after moneys in amount sufficient to pay any registered warrant in its order have been received, fail to mail notice thereof to the person registering such warrant, shall forfeit to such person ten per cent. on the amount of such warrant, and ten per cent. additional for every thirty days thereafter, during which such failure shall continue.

**SEC. 12. [Failure to register or pay—Penalty.]**—Any such treasurer, who shall fail to register any warrant, in the order of its presentation therefor, or shall fail to pay the same in the order of its registration, shall be liable on his official bond to each and every person, the payment of whose warrant or warrants is thereby postponed, in the sum of five hundred dollars, to be recovered in a civil action, one-half of which shall go to the person bringing such action, and one-half to the school fund of the county in which such action is brought.

**SEC. 13. [Issuing duplicate warrant.]**—Whenever it shall be made to appear to the satisfaction of any officer, authorized by law to issue warrants, that any warrant issued by him has been lost and destroyed, such officer shall have authority to issue a duplicate thereof, numbered the same as the original, with the word "duplicate" written or printed in red ink across the face thereof; *Provided*, That no such duplicate warrant shall be issued until the party applying for the same shall make affidavit that he was the owner of the original warrant, and

SEC. 12. But see Const., sec. 5, p. 30.

SEC. 12. "An act to provide for the issuance of duplicate warrants." Laws 1875, 176. Took effect Feb. 17, 1875.

shall also file with such officer an indemnity bond with good and sufficient security conditioned to refund any money by him or his assigns received on such duplicate in case of presentation and payment of the original by the treasurer upon whom the same is drawn, whether upon a genuine endorsement thereon or otherwise. [1875 § 1, 176.]

#### CHAPTER 94.—WEIGHTS AND MEASURES.

**SECTION 1. [Standards—Tons.]**—The standard of weights and linear measures shall be the same as that established by act of congress, for the several states, except that the ton shall consist of two thousand pounds.

**SEC. 2. [Bushel—Subdivisions.]**—A bushel shall consist of two thousand and one hundred and fifty cubic inches. The half-bushel, peck, and half-peck shall consist of the proper division and subdivision of a bushel.

**SEC. 3. [Gallon.]**—A gallon shall consist of two hundred and thirty-one cubic inches.

**SEC. 4. [Pound.]**—A pound avoirdupois shall consist of seven thousand grains in Troy weight.

**SEC. 5. [Weight of bushel of articles.]**—A bushel of each of the articles enumerated in this section shall consist of the number of pounds respectively affixed to each, viz.:

Apples, dried, per bushel.....	24 pounds.
Barley.....	48 “
Beans, castor.....	46 “
Beans, white.....	60 “
Bran.....	20 “
Buckwheat.....	52 “
Coal, stone.....	80 “
Corn, ear.....	70 “
Corn, shelled.....	56 “
Corn meal.....	50 “
Hair for plastering.....	8 “
Hay, per ton.....	2,000 “
Honey, strained, per gallon.....	12 “
Lime, unslacked, per bushel.....	80 “
Malt, barley.....	30 “
Oats.....	34 “
Onions.....	57 “
Onion sets.....	25 “
Peaches, dried.....	33 “
Potatoes, Irish.....	60 “
Potatoes, sweet.....	50 “
Peas.....	60 “
Rye.....	56 “
Seeds, Blue Grass.....	14 “
Clover.....	60 “
Flax.....	56 “
Hemp.....	44 “
Hungarian grass.....	60 “
Millet.....	40 “
Osage orange.....	32 “
Sorghum.....	30 “
Timothy grass.....	45 “
Salt.....	50 “
Turnips.....	55 “
Wheat.....	60 “

[Amended Laws 12 Sess. Ty., § 1, 20.]

more than twenty-five dollars, to be recovered before any court having competent jurisdiction; the fine shall be appropriated to the use of the common schools in the same county; he shall also be liable to the injured party in the double amount of damages, with the costs of suit.

competent jurisdiction; the fine shall be appropriated to the use of the common schools in the same county; he shall also be liable to the injured party in the double amount of damages, with the costs of suit.

## CHAPTER 95.—THE LAWS OF NEBRASKA.

### ARTICLE I.—REVISED STATUTES OF 1866.

SECTION 1. This act shall be known as "The Revised Statutes of Nebraska," and is hereby declared to be the law of the territory of Nebraska, and shall take effect and be in force from and after the first day of July, in the year of our Lord one thousand eight hundred and sixty-six. [R. S. 683. G. S. 1079.]

SEC. 2. "An act to establish a code of civil procedure," approved November 1, 1858, and an act supplemental thereto, approved November 4, 1858, "An act to adopt and establish a criminal code for the territory of Nebraska," approved 1858, all laws and acts amendatory of and supplemental to said code, and all acts and laws of a general nature relative to the civil and criminal laws and proceedings of this territory, passed prior to the eleventh session of the legislative assembly begun and held at Omaha on the first Thursday after the first Monday in January, 1866, and all acts and parts of acts conflicting with the provisions of this revision, are hereby repealed; *Provided*, The re-enactment, amendment or repeal of any law, act, title, section, chapter or provision of the civil or criminal code, or of any general law of this territory, shall in nowise affect any contract, right, claim, interest, title, action or liability which may have accrued, or any order, judgment, decree, sale, recognizance, instrument or proceeding made, entered or had under any provision of the laws hereby re-enacted, amended or repealed, nor shall such re-enactment, amendment or repeal in anywise affect any criminal prosecution heretofore commenced, or any fine, penalty, forfeiture or punishment for crimes and misdemeanors committed before the taking effect of this revision, but such prosecution shall be carried on and continued in the manner now provided by law, and all fines, penalties and forfeitures heretofore incurred, and crimes and misdemeanors committed, shall be prosecuted the same as if no re-enactment, amendment or repeal had been made. [Id.]

SEC. 3. *Whereas*, Certain discrepancies exist between the original rolls on file in the office of the secretary of the territory, and the published laws of the eleventh session of the legislative assembly of this territory; *Be it further enacted*, That whenever such discrepancies exist, the volume of laws published under the title of "The Revised Statutes of the territory of Nebraska," in force July 1, 1866, shall be taken and received as the laws of this territory, until afterwards amended or repealed. [1867, 12 Sess. Ter. § 2, 7.]

SEC. 4. That the volume of laws published under the title of "The Revised Statutes of the territory of Nebraska," and the appendix thereto, shall be hereafter received in all courts of this territory, anything in the original rolls on file in the secretary's office to the contrary notwithstanding. [Id. § 8.]

### ARTICLE II.—COMPILED STATUTES 1881.

SECTION 1. [Compilation].—The public acts now in force, including the Revised Statutes of 1866, and the public acts and laws passed since that revision, and which may be passed by the legislature at its present session, shall be com-

SEC. 6. As to double damages, see 6 Neb. 37.

ART. I. Secs. 1-2 R. S. 683, and secs. 2-3 of "An act to amend the code of civil procedure." Laws 12th Sess. Terr., 7.

ART. II. "An act to provide for the publication of a compilation of the statutes." Approved and took effect Feb. 26, 1881.

piled, arranged and put into chapters, with appropriate heads and titles, and with reference to decisions of the supreme court. [1881 § 1, chap. 79.]

SEC. 2. [**Compiler—Price.**—The said statutes shall be compiled published by Guy A. Brown, of Lancaster county, upon the condition that all expenses connected with the preparation and publication thereof shall be borne by him, and the sale price of each copy when published, shall not exceed five dollars; *Provided further*, That the said Guy A. Brown shall furnish to the state of Nebraska all copies of said statutes which may be required by the state, at a price not to exceed two dollars and fifty cents per copy; *Provided further*, That said statutes shall be equal in quality of paper and binding to the General Statutes of 1873, be set with type of the same size and contain at least one-third more matter on a page, and be thoroughly indexed. Said statutes to be published on or before July 1st, 1881.

SEC. 3. [**Bond.**—The said compiler shall give bond in the sum of five thousand dollars with at least three sureties conditioned for the faithful performance of his duties, and to carry into effect the provisions of this act, which bond shall be approved by the secretary of state and filed in his office, and thereupon the said secretary of state shall permit the said compiler, when the same are not in use by him, to take the original rolls of said laws for the purpose of making accurate copies thereof for said statutes, the same to be returned upon publication of said statutes, and whenever required by the secretary of state.

SEC. 4. [**Receivable in evidence.**—The said statutes when published shall be accompanied by a certificate of the compiler that the same are true and accurate copies of the said original rolls, and thereupon the said statutes shall be competent evidence of the several acts and resolutions therein contained, in all courts of this state without further proof or authentication.

SEC. 5. [**Session laws 1881.**—Nothing herein contained shall be construed to interfere or dispense with the publication of the session laws of this session in the manner provided by law.



## PART II.

### CODE OF CIVIL PROCEDURE.

#### PRELIMINARY PROVISIONS.

**SECTION 1. [Construction of code.]**—The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. Its provisions, and all proceedings under it, shall be liberally construed, with a view to promote its object and assist the parties in obtaining justice. [R. S. 894. G. S. 524.]

#### TITLE I.—FORM OF CIVIL ACTIONS.

**SEC. 2. [One form of action.]**—The distinction between actions at law and suits in equity, and the form of all such actions and suits heretofore existing are abolished; and in their place there shall be hereafter but one form of action, which shall be called a civil action. [Amended 1867, 71.]

**SEC. 3. [Parties—Designation.]**—In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

**SEC. 4. [Issues—Feigned—Not plead.]**—There can be no feigned issues; but a question of fact not put in issue by the pleadings may be tried by a jury, upon an order for the trial, stating distinctly and plainly, the question of fact to be tried; and such order is the only authority necessary for a trial.

#### TITLE II.—TIME OF COMMENCING CIVIL ACTIONS.

**SEC. 5. [Limitation.]**—Civil actions can only be commenced within the time prescribed in this title, after the cause of action shall have accrued.

**SEC. 6. [Recovery of real property—Mortgages.]**—An action for the recovery of the title or possession of lands, tenements or hereditaments, can only be brought within ten years after the cause of such action shall have accrued. This section shall be construed to apply also to mortgages. [1869 § 1, 67. Took effect July 1, 1869.]

**SEC. 7. [Same—Persons under disability.]**—Any person entitled to commence any action for the recovery of the title or possession of any lands, tenements or hereditaments, who may be under any legal disability when the cause of action accrues, may bring such action within ten years after the disability is removed, and at no time thereafter. [R. S. 895. Amended to take effect Sept. 1, 1878. G. S. 525.]

**SEC. 1.** One of the primary objects of the code was to prevent the rights of a suitor or the merits of his cause from being sacrificed to technical rules. 2 Neb. 137.

**SEC. 2.** The abrogation of the forms of pleading and the adoption of a uniform system of remedies, does not abolish the distinction between law and equity in the determination of causes. 3 Neb. 115. 4 Neb. 587.

**SEC. 4.** In an equity case, when questions of fact are necessary to be determined, whether put in issue by the pleadings or not, the same may be tried by a jury. 10 Neb. 189.

**SEC. 5.** When it appears from the face of the petition that the action is barred, the defendant may demur to the petition on the ground that the facts stated therein do not constitute a cause of action. 5 Neb. 464. 9 Neb. 232. But in an action for breach of covenants of warranty, if the petition does not show when cause of action accrued, by reason of ouster and dispossession of the premises, the statute cannot be interposed by general demurrer. 3 Neb. 87. The general operation of the statute explained. 5 Neb. 370.

**SEC. 6.** The original section read "twenty-one years." As against the right to redeem a conveyance absolute, but in fact a mortgage, the statute does not begin to run until a tender of the money secured by the mortgage, and refusal to reconvey. 1 Neb. 344. The change in the statutory period from twenty-one to ten years made by the amendment of 1869, applies to actions brought since the taking effect of the amendment. 4 Neb. 46. The statute commences to run at once, if an incumbrance existed at the time of a conveyance with covenants against incumbrances. 7 Neb. 404. Where the debt is barred by the statute, no action can be maintained on the mortgage. 2 Neb. 26. 5 Neb. 466. 6 Neb. 391. 9 Neb. 232. But under the amendment of this section, an action to foreclose a mortgage can be brought in ten years, although the note has been barred. 3 Neb. 264.

**SEC. 8. [Forcible entry and detainer.]**—An action for the forcible entry and detainer, or forcible detainer only, of real property can only be brought within one year after the cause of such action shall have accrued.

**SEC. 9. [Other civil actions—Limitations.]**—Civil actions, other than for the recovery of real property, can only be brought within the following periods, after the cause of action shall have accrued:

**SEC. 10. [Written instrument—Foreign judgment.]**—Within five years, an action upon a specialty, or any agreement, contract, or promise in writing, or foreign judgment.

**SEC. 11. [Parol contract.]**—Within four years, an action upon a contract, not in writing, expressed or implied; an action upon a liability created by statute, other than a forfeiture or penalty.

**SEC. 12. [Trespass to realty—Personalty—Replevin—Torts—Fraud.]**—Within four years, an action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud, but the cause of action in such case shall not deemed to have accrued until the discovery of the fraud.

**SEC. 13. [Injury to character—Assault—Malicious prosecution—False imprisonment—Penalty.]**—Within one year an action for libel, slander, assault and battery, malicious prosecution or false imprisonment; an action upon a statute for a penalty or forfeiture, but where the statute giving such action prescribes a different limitation, the action may be brought within the period so limited.

**SEC. 14. [Official bond—Undertaking.]**—An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, or in any case whatever required by statute, can only be brought within ten years.

**SEC. 15. [Contract—Failure of consideration.]**—Actions brought for damages growing out of the failure, or want of consideration of contracts, express or implied, or for the recovery of money paid upon contracts, express or implied, the consideration of which has wholly or in part failed, shall be brought within four years.

**SEC. 16. [Other relief.]**—An action for relief not hereinbefore provided for, can only be brought within four years after the cause of action shall have accrued.

**SEC. 17. [Legal disabilities—Action in rem.]**—If a person entitled to bring any action mentioned in this title, except for a penalty or forfeiture, be, at the time the cause of action accrued, within the age of twenty-one years, a married woman, insane, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by this title after such disability shall be removed. The absence from the state, death, or other disability of a non-resident, save the cases mentioned in this section, shall not operate to extend the period within which actions *in rem* shall be commenced by and against such non-resident, or his representatives.

**SEC. 10.** County warrants are not within the operation of the statute. 1 Neb. 382. The holder of a note, barred by the statute, lodged with the maker and on the following morning produced the note and demanded payment. Not receiving it the holder said he would credit the charge for lodging, amounting to \$1, on the note, to which the maker did not assent. *Held* not a payment to take the case out of the statute. 2 Neb. 22. A note secured by a mortgage is not a "specialty" within the meaning of the statute. 5 Neb. 87. Part payment or a new promise upon an outlawed firm note, made by one partner, after dissolution, does not revive the debt against another partner. 5 Neb. 370. A judgment of a state court properly authenticated is conclusive upon the merits of the suit, but the statute of limitation may be plead in an action brought in another state upon such judgment. 6 Neb. 424.

**SEC. 11.** Cause of action arose in Iowa, where defendant resided, but he carried on business and was personally present in Nebraska nearly every day for about three years, when he moved with his family and continued to reside there. Suit commenced on contract not in writing after four years. *Held*, that statute commenced to run at the time of defendant's removal to Nebraska. 9 Neb. 501.

**SEC. 12.** Cited 4 Neb. 95.

**SEC. 17.** Whether a married woman is considered under legal disability, *Quere*. See chapter entitled "MARRIED WOMEN," page 313, and also amendment made to section 7 of this code. An action to subject mortgaged property to the payment of the mortgage debt is a proceeding *in rem*, and the last clause of this section applies to such action. 6 Neb. 89, 465. 6 Neb. 391. 9 Neb. 232.

**SEC. 18. [Actions barred by laws of other states.]**—All actions, or causes of action, which are or have been barred by the laws of this state, or any state or territory of the United States, shall be deemed barred under the laws of this state.

**SEC. 19. [Action when commenced.]**—An action shall be deemed commenced, within the meaning of this title, as to the defendant, at the date of the summons which is served on him; where service by publication is proper, the action shall be deemed commenced at the date of the first publication, which publication shall be regularly made.

**SEC. 20. [Defendant—Out of the state—Concealed.]**—If, when a cause of action accrues against a person, he be out of the state, or shall have absconded or concealed himself, the period limited for the commencement of the action shall not begin to run until he come into the state, or while he is absconded or concealed; and if, after the cause of the action accrues he depart from the state, or abscond or conceal himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought.

**SEC. 21. [Action barred by laws of other state.]**—When a cause of action has been fully barred by the laws of any state or country where the defendant has previously resided, such bar shall be the same defense in this state as though it had arisen under the provisions of this title.

**SEC. 22. [Part payment—New promise—Acknowledgment.]**—In any cause founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same, shall have been made in writing, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise.

**SEC. 23. [Parties—Name—Initials—Contractions.]**—In all actions upon bills of exchange or promissory notes, or other written instruments, whenever any of the parties thereto are designated by the initial letter or letters, or some contraction of the christian or first name or names, it shall be sufficient to designate such person by the name, initial letter or letters, or contraction of the first name or names, instead of stating the christian or first name or names in full.

**SEC. 24. [Associations—Firms, how named.]**—Any company or association of persons formed for the purpose of carrying on any trade or business, or for the purpose of holding any species of property in this state, and not incorporated, may sue and be sued by such usual name as such company, partnership, or association may have assumed to itself or be known by, and it shall not be necessary in such case to set forth in the process or pleading, or to prove at the trial, the names of the persons composing such company.

**SEC. 25. [Same—Process—Service.]**—Process against any such company or firm shall be served by a copy left at their usual place of doing business within the county, with one of the members of such company or firm, or with the clerk or general agent thereof, and executions issued on any judgments rendered in such proceedings shall be levied only on partnership property.

**SEC. 26. [Same—Security for costs.]**—In cases where a company shall sue in its partnership name, such company shall procure the writ to be endorsed by a responsible surety, resident of the county, for costs, or otherwise give security for costs.

SEC. 19. This section and sections 62 and 63 construed with reference to each other, and sec. 113, indicate that the jurisdiction of the court attaches to the defendant when he is legally served with summons, without regard to the defects of the petition. 2 Neb. 136.

SEC. 20. The mere temporary absence of a debtor from the state, when he has a usual place of residence therein where service of summons can be had upon him, does not suspend the statute. The words "usual place of residence" mean the place of abode at the time of service. 4 Neb. 29, 30. 5 Neb. 88. See note to sec. 11.

SEC. 23. These special provisions are construed strictly and must be closely pursued. 7 Neb. 245.

SEC. 24. Suit brought in the name of "H. G., A. T., and M. G., partners under firm name of and style of G. T. & Co." held not necessary that petition should state that partnership was "formed for the purpose of carrying on trade or business, or for the purpose of holding any species of property in this state." 9 Neb. 216.

**SEC. 27. [Same—Individual property, how subjected.]**—If the plaintiff, in any judgment so rendered against any company or partnership, shall seek to charge the individual property of the persons composing such company or firm, it shall be lawful for him to file a bill in chancery against the several members thereof, setting forth his judgment and the insufficiency of the partnership property to satisfy the same, and to have a decree for the debt, and an award of execution against all such persons, or any of them, as may appear to have been members of such company, association or firm.

**SEC. 28. [Repealed. Gen. Stat. 713.]**

### TITLE III.—PARTIES TO CIVIL ACTIONS.

**SEC. 29. [Action prosecuted in name of real party in interest.]**—Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section thirty-two.

**SEC. 30. [Action by assignee.]**—The assignee of a thing in action may maintain an action thereon, in his own name and behalf, without the name of the assignor.

**SEC. 31. [Assignment—Effect on equities.]**—In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense now allowed; but this section shall not apply to negotiable bonds, promissory notes, or bills of exchange, transferred in good faith, and upon good consideration, before due.

**SEC. 32. [Beneficiaries — Officers — Official bonds — Authorized persons.]**—An executor, administrator, guardian, trustee of an express trust, a person with whom or in whose name a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action without joining with him the person for whose benefit it is prosecuted. Officers may sue and be sued in such name as is authorized by law, and official bonds may be sued upon in the same way.

**SECS. 33-34. [Repealed. Gen. Stat. 713.]**

**SEC. 35. [Husband and wife joined.]**—If a husband and wife be sued together, the wife may defend for her own right; and, if the husband neglect to defend, she may defend for his right also.

**SEC. 36. [Infant—Action for.]**—The action of an infant must be brought by his guardian or next friend. When the action is brought by his next friend, the court has power to dismiss it, if it is not for the benefit of the infant; or, to substitute the guardian of the infant, or any person, as the next friend.

**SEC. 37. [Same—Liability for costs.]**—The guardian, or the next friend, is liable for the costs of the action brought by him, and, when he is insolvent, the court may require security for them. Either may be a witness in an action brought by him.

**SEC. 38. [Infant—Action against.]**—The defense of an infant must be

**SEC. 27.** Action in foreign state and judgment against partnership there. Suit here on such judgment against two of the partners to charge them personally. *Held*, That to maintain such action it was necessary to allege in the petition, and, if denied, prove that the partnership property was insufficient to satisfy the judgments. 10 Neb. 262.

**SEC. 29.** A private person cannot maintain an action to abate a public nuisance, unless he can aver and prove some special injury to himself. 1 Neb. 337. The interest of one not a nominal party to a written instrument must affirmatively appear in the petition to enable him to maintain a suit thereon. 8 Neb. 468. Cited also 9 Neb. 25, 433.

**SEC. 30.** The assignee of a mechanics lien can maintain the action. 4 Neb. 58. The assignee of a chose in action is the proper and only party who can maintain suit thereon. 1 Neb. 327.

**SEC. 31.** This section simply gives the right of set off in an action by the assignee, and limits it to such as is "now allowed." 3 Neb. 166. See note to sec. 104. An innocent purchaser before due and without notice takes a note free from defense of usury. 9 Neb. 226. 10 Neb. 86. A set-off to a promissory note which would have been good between original parties may be pleaded against an indorsee who acquires it after maturity. 7 Neb. 82.

**SEC. 32.** Cited 5 Neb. 93. This section authorizes suit on an official bond by the public, while sec. 643 gives a right of action to an individual. 9 Neb. 434.

**SECS. 33, 34.** See sec 3, chap. 53, ante p. 343.

**SEC. 37.** The infant is not liable for costs, even in an action brought without a guardian or next friend but not terminated during infancy, if, on reaching his majority, he disclaims all benefit from the suit, and refuses to proceed further. 8 Neb. 341.

by a guardian for the suit, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or by a probate judge. The appointment cannot be made until after service of the summons in the action, as directed by this code.

**SEC. 39. [Same—Guardian ad litem.]**—The appointment may be made upon the application of the infant, if he be of the age of fourteen years, and apply within twenty days after the return of the summons. If he be under the age of fourteen, or neglect so to apply, the appointment may be made upon the application of any friend of the infant, or on that of the plaintiff in the action.

**SEC. 40. [Plaintiff—Joinder.]**—All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this title.

**SEC. 41. [Defendants, who made.]**—Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

**SEC. 42. [Parties united in interest joined.]**—Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason being stated in the petition.

**SEC. 43. [Same—Common interest—Numerous parties.]**—When the question is one of common or general interest of many persons, or when the parties are very numerous, and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

**SEC. 44. [Parties severally liable.]**—Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action, at the option of the plaintiff.

**SEC. 45. [Action not to abate by disability.]**—An action does not abate by the death, marriage or other disability of a party, or by the transfer of any interest therein, during its pendency, if the cause of action survive or continue. In the case of the marriage of a female party, the fact being suggested on the record, the husband may be made a party with his wife; and, in the case of the death or other disability of a party, the court may allow the action to continue by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made, to be substituted in the action.

**SEC. 46. [Parties necessary to determine controversy.]**—The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a determination of the controversy cannot be had without the presence of other parties, the court must order them to be brought in.

**SEC. 47. [Same—Parties having interest in property.]**—When, in an action for the recovery of real or personal property, any person having an interest in the property applies to be made a party, the court may order it to be done.

**SEC. 48. [Preservation of property—Interpleader.]**—Upon the affidavit of a defendant before answer in an action upon contract, or for the recovery of personal property, that some third party, without collusion with him, has or

**SEC. 40.** In an action brought upon a judgment against a principal debtor, in behalf of a surety who has, paid the same, the original plaintiffs are not proper parties. 1 Neb. 339. An attorney claiming a lien on money in hands of defendant may, under certain circumstances, be admitted as a party plaintiff for the purpose of protecting and enforcing such lien. 10 Neb. 579.

**SEC. 42.** A married woman and her minor children, constituting one family, may join in an action for loss of the means of support against those who have furnished intoxicating liquor to the husband and father. 9 Neb. 311.

**SEC. 44.** A joint action cannot be maintained against the guarantor and maker of a note. 9 Neb. 447.

**SEC. 45.** Cited 4 Neb. 58. 6 Neb. 521. See chap. 53, ante page 343.

makes a claim to the subject of the action, and that he is ready to pay or dispose of the same, as the court may direct, the court may make an order for the safe-keeping, or for the payment, or deposit in court, or delivery of the subject of the action, to such person as it may direct, and an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant. If such third party, being served with a copy of the order by the sheriff, or such other person as the court may direct, fail to appear, the court may declare him barred of all claim in respect to the subject of the action, against the defendant therein. If such third party appear, he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit or delivery thereof.

**Sec. 49. [Same—Sheriff].**—The provisions of the last section shall be applicable to an action brought against a sheriff, or other officer, for the recovery of personal property, taken by him under execution, or for the proceeds of such property so taken and sold by him. And the defendant in such action shall be entitled to the benefit of those provisions against the party in whose favor the execution issued, upon exhibiting to the court the process under which he acted, with his affidavit that the property, for the recovery of which, or its proceeds, the action is brought, was taken under such process.

**Sec. 50. [Action against sheriff—Interested party substituted.]**—In an action against a sheriff, or other officer, for the recovery of property taken under an execution, and replevied by the plaintiff in such action, the court may, upon application of the defendant, and of the party in whose favor the execution issued, permit the latter to be substituted as the defendant, security for the costs being given.

#### TITLE IV.—THE COUNTY IN WHICH ACTIONS ARE TO BE BROUGHT.

**Sec. 51. [Realty—Recovery—Partition—Sale.]**—Actions for the following causes must be brought in the county in which the subject of the action is situated, except as provided in section fifty-two. *First.* For the recovery of real property or of an estate or interest therein. *Second.* For the partition of real property. *Third.* For the sale of real property under a mortgage, lien or other incumbrance or charge.

**Sec. 52. [Same—In several counties.]**—If the real property, the subject of the action, be an entire tract, and situated in two or more counties, or if it consists of separate tracts situated in two or more counties, the action may be brought in any county in which any tract or part thereof is situated, unless it be an action to recover the possession thereof. And if the property be an entire tract, situated in two or more counties, an action to recover the possession thereof may be brought in either of such counties; but if it consists of separate tracts in different counties, the possession of such tracts must be recovered by separate actions brought in the counties where they are situated.

**Sec. 53. [Same—Specific performance.]**—An action to compel the specific performance of a contract of sale of real estate, may be brought in the county where the defendants, or any of them, reside.

**Sec. 54. [Fines—Penalties—Public officers—Official bonds.]**—Actions for the following causes must be brought in the county where the cause, or some part thereof, arose: *First.* An action for the recovery of a fine, forfeiture or penalty, imposed by a statute; except that, when it is imposed for an offense committed on a river, or other stream of water, or road which is the boundary of two or more counties, the action may be brought in any county bordering on such river, water-course or road, and opposite to the place where the offense was committed. *Second.* An action against a public officer, for an act done by him in vir-

tue or under color of his office, or for a neglect of his official duty. *Third.* An action on the official bond or undertaking of a public officer.

SEC. 55. [**Against corporations.**].—An action other than one of those mentioned in the first three sections of this title, against a corporation created by the laws of this state, may be brought in the county in which it is situated, or has its principal office or place of business; but if such corporation be an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose.

SEC. 56. [**Railroad—Stage companies.**].—An action against a railroad company, or an owner of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as a carrier, may be brought in any county through or into which the said road or line passes.

SEC. 57. [**Turnpike companies.**].—An action other than one of those mentioned in the first three sections of this title, against a turnpike road company, may be brought in any county in which any part of the road lies.

SEC. 58. [**Corporations—Exceptions.**].—The provisions of this title shall not apply in the case of any corporation created by a law of this state, whose charter prescribes a place where alone a suit against such corporation may be brought.

SEC. 59. [**Non-residents.**].—An action other than one of those mentioned in the first three sections of this title, against a non-resident of this state or a foreign corporation, may be brought in any county in which there may be property of, or debts owing to, said defendant, or where said defendant may be found; but if said defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose.

SEC. 60. [**Other actions.**].—Every other action must be brought in the county in which the defendant, or some of the defendants, resides, or may be summoned.

SEC. 61. [**Change of venue.**].—In all cases in which it shall be made to appear to the court that a fair and impartial trial cannot be had in the county where the suit is pending, or when the judge is interested or has been of counsel in the case or subject matter thereof, or is related to either of the parties, or is otherwise disqualified to sit, the court may on application of either party change the place of trial to some adjoining county, wherein such impartial trial can be had; but if the objection be against all the counties of the district, then to the nearest county in the adjoining district. [R. S. 402. Amended to take effect Sept. 1, 1873. G. S. 532.]

SEC. 61 a. [**Same—Proceedings.**].—SEC. 3. When an order is made transferring a cause for trial, as provided in the preceding section, the clerk of the court must transmit the pleadings and papers therein to the clerk of the court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made. The court to which an action is transferred shall have and exercise over the same the like jurisdiction as if it had been originally commenced therein. [G. S. 712.]

SEC. 61 b. [**Same—Final judgment.**].—SEC. 4. When an action affecting the title or possession of real estate has been brought in or transferred to any court of a county, other than the county in which the real estate or some portion of it is situated, the clerk of such court must, after final judgment therein, certify such judgment under his seal of office, and transmit the same to the corresponding court of the county in which the real estate affected by the action is situated. The clerk receiving such copy must file, docket, and record the judgment in the records of the court, briefly designating it as a judgment transferred from ——— court (naming the proper court). [G. S. 712.]

## TITLE V.—MANNER OF COMMENCING ACTIONS.

SEC. 62. [**How—Petition—Summons.**].—A civil action must be commenced by filing in the office of the clerk of the proper court a petition and causing a summons to be issued thereon. [R. S. 403. 1869, 63. 1871, 110. G. S. 533.]

SEC. 63. [**Precipe.**].—The plaintiff shall also file with the clerk of the court a precipe stating the names of the parties to the action, and demanding that a summons issue thereon.

SEC. 64. [**Summons—Requisites.**].—The summons shall be issued by the clerk, shall be under the seal of the court from which the same shall issue, and shall be signed by the clerk. Its style shall be, "The State of Nebraska, \_\_\_\_\_ county," and it shall be dated the day it is issued. It shall be directed to the sheriff of the county, and command him to notify the defendant or defendants named therein, that he or they have been sued, and must answer the petition filed by the plaintiff, giving his name, at the time stated therein, or the petition will be taken as true and judgment rendered accordingly. And where the action is for the recovery of money only, there shall be endorsed on the writ the amount to be furnished in the precipe, for which, with interest, judgment will be taken, if the defendant fail to answer. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

SEC. 65. [**Summons issued to several counties.**].—Where the action is rightly brought in any county, according to the provisions of title four, a summons shall be issued to any other county, against any one or more of the defendants, at the plaintiff's request.

SEC. 66. [**Summons—When returnable.**].—Whenever the time for bringing parties into court is not fixed by statute, the summons shall be returnable on the second Monday after the day of its date, but when issued to any other county than the one in which the action is brought, it may be made returnable at the option of the party having it issued, on the third or fourth Monday after its date. It shall state the day of the month on which it is returnable.

SEC. 67. [**Alias summons.**].—When a writ is returned "not summoned," other writs may be issued, until the defendant or defendants shall be summoned; and when defendants reside in different counties, writs may be issued to such counties at the same time.

## SERVICE OF SUMMONS—ACTUAL SERVICE.

SEC. 68. [**By whom.**].—The summons shall be served by the officer to whom it is directed, who shall indorse on the original writ the time and manner of service. It may also be served by any person not a party to the action, appointed by the officer to whom it is directed. The authority of such person shall be indorsed on the writ. When the writ is served by a person appointed by the officer to whom it is directed, or when the service is made out of this state, the return shall be verified by oath or affirmation.

SEC. 69. [**How served.**].—The service shall be by delivering a copy of the

SEC. 62. Jurisdiction attaches to defendant when he is legally served with summons without regard to the defects contained in the petition. 2 Neb. 136. Cited also 10 Neb. 333.

SEC. 64. No other judgment can be rendered than that notice of which is indorsed on the summons. 1 Neb. 132. The indorsement cannot be amended unless the defendant appear in the action. Id. But if the action is not "for the recovery of money only," no indorsement is necessary; still if one is made it should be sufficiently complete to advise the defendants of all the relief prayed for. Id. 133. See also 9 Neb. 123. The failure to indorse the amount claimed is of no consequence unless the defendant fails to appear. 3 Neb. 219. 9 Neb. 108. An action for the recovery of money only is one where it is sought to reduce a debt to judgment upon which an execution may issue and be levied upon any property of the defendant not exempt. 9 Neb. 60. The caption though not in proper form may be cured by amendment. 4 Neb. 382. An amendment to a summons by correcting mistake in name of plaintiff relates back to the time of service. 4 Neb. 177.

SEC. 66. The statute is mandatory. No discretion is vested in either the clerk or the court in respect to the return or answer days. 3 Neb. 218.

SEC. 69. If service is made by an unauthorized person it will be void, but in the absence of a showing to the contrary it will be presumed, after judgment, that the person serving the process was lawfully authorized. 9 Neb. 94. County judges and justices of the peace may depute persons to serve process. Id.

SEC. 69. Service on the return day is sufficient. 1 Neb. 432. The words "usual place of residence," mean the place of abode at the time of service. 4 Neb. 30. 5 Neb. 88. Service by leaving a copy at defendant's "place of business," is not sufficient. 8 Neb. 112. And a return showing service "by reading" to defendant, etc., held insufficient. 9 Neb. 504.



summons to the defendant personally, or by leaving one at his usual place of residence, at any time before the return day.

SEC. 70. [**Return.**].—In all cases the return must state the time and manner of service.

SEC. 71. [**Returned, when.**].—The officer to whom the summons is directed must return the same at the time therein stated.

SEC. 72. [**Acknowledgment—Voluntary appearance.**].—An acknowledgment on the back of the summons, or the voluntary appearance of a defendant is equivalent to a service.

SEC. 73. [**Corporations.**].—A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office, or last usual place of business of such corporation.

SEC. 74. [**Same—Insurance companies.**].—When the defendant is an incorporated insurance company, and the action is brought in a county, in which there is an agency thereof, the service may be upon the chief officer of such agency.

SEC. 75. [**Foreign corporations.**].—When the defendant is a foreign corporation, having a managing agent in this state, the service may be upon such agent.

SEC. 76. [**Infants.**].—When the defendant is a minor under the age of fourteen years, the service must be upon him, and upon his guardian or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults.

#### CONSTRUCTIVE SERVICE.

SEC. 77. [**By publication, when.**].—Service may be made by publication in either of the following cases: *First.* In actions brought under the fifty-first, fifty-second, and fifty-third sections of this code, where any or all of the defendants reside out of the state. *Second.* In actions brought to establish or set aside a will, where any or all the defendants reside out of the state. *Third.* In actions brought against a non-resident of this state, or a foreign corporation, having in this state property or debts owing to them, sought to be taken by any of the provisional remedies, or to be appropriated in any way. *Fourth.* In actions which relate to, or the subject of which is, real or personal property in this state, where any defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consists wholly or partially in excluding him from any interest therein, and such defendant is a non-resident of the state or a foreign corporation. *Fifth.* In all actions where the defendant being a resident of the state has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors or to avoid the service of a summons, or keeps himself concealed therein with the like intent.

SEC. 70. A summons directing service on Harrison Johnson, and returned served on the "within named H. Johnson," held good. 2 Neb. 131. Return cannot be impeached in a collateral proceeding. 2 Neb. 132. It is unnecessary to certify on the return that service was made in the county of which the party making it is an officer, as such will be the presumption. 9 Neb. 94. In absence of a motion to quash, court will not take notice of want of formality in return. 10 Neb. 351.

SEC. 72. The voluntary appearance of defendant is a waiver of defects in summons. 2 Neb. 117. He may appear specially to object to the jurisdiction, but if by motion or other form of application he seeks to bring the powers of the court into action, he will be deemed to have appeared generally. 1 Neb. 15, 107. 3 Neb. 220. 4 Neb. 512. 5 Neb. 107. 9 Neb. 504. And by such appearance he waives irregularities in service of summons, etc. 8 Neb. 113.

SEC. 75. An agent who is invested with the general conduct and control, at a particular place, of the business of a corporation is a managing agent within the meaning of this section and it is immaterial where he resides. 1 Neb. 15.

SEC. 77. If notice is given and the court passes upon its sufficiency, and that of the affidavit for service by publication, such action of the court cannot be reviewed collaterally. 1 Neb. 238.

**SEC. 78. [Affidavit].**—Before service can be made by publication, an affidavit must be filed, that service of a summons cannot be made within this state, on the defendant or defendants to be served by publication, and that the case is one of those mentioned in the preceding section. When such affidavit is filed the party may proceed to make service by publication.

**SEC. 79. [Publication, how made].**—The publication must be made four consecutive weeks, in some newspaper printed in the county where the petition is filed, if there be any printed in such county; and if there be not, then in some newspaper printed in the state of general circulation in that county. It must contain a summary statement of the object and prayer of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served, when they are required to answer.

**SEC. 80. [Same—When complete—Proof].**—Service by publication shall be deemed complete when it shall have been made in the manner and for the time prescribed in the preceding section; and such service shall be proved by the affidavit of the printer, or his foreman or principal clerk, or other person knowing the same.

**SEC. 81. [Personal service out of state].**—In all cases where service may be made by publication, and in all other cases where the defendants are non-residents, and the cause of action arose in the state, suit may be brought in the county where the cause of action arose, and personal service of the summons may be made out of the state by the sheriff or some person appointed by him for that purpose. In all cases where service of a summons is made on a person without the state, proof of such service must be made by affidavit, stating the time and manner of service, and such service shall be made in the same manner as summonses are served on parties residing within the state.

**SEC. 82. [Judgment on constructive service, how opened].**—A party against whom a judgment or order has been rendered without other service than by publication in a newspaper, may, at any time within five years after the date of the judgment or order, have the same opened and be let in to defend; before the judgment or order shall be opened, the applicant shall give notice to the adverse party of his intention to make such an application, and shall file a full answer to the petition, pay all costs, if the court require them to be paid, and make it appear to the satisfaction of the court, by affidavit, that during the pendency of the action he had no actual notice thereof in time to appear in court and make his defense; but the title to any property, the subject of the judgment or order sought to be opened, which by it, or in consequence of it, shall have passed to a purchaser in good faith, shall not be affected by any proceedings under this section, nor shall they affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order, as provided by this section, shall be allowed to present counter affidavits, to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make his defense.

**SEC. 83. [Unknown heirs].**—In actions where it shall be necessary to make the heirs or devisees of any deceased person defendants, and it shall appear by the affidavit of the plaintiff annexed to his petition, that the names of such heirs or devisees, or any of them, and their residences, are unknown to the plaintiff, proceedings may be had against such unknown heirs or devisees, without naming them, and the court shall make such order respecting service as may be

SEC. 78. When no affidavit is filed there is no valid service. 7 Neb. 152. The affidavit is jurisdictional and unless it conforms substantially to the statute, and set forth the necessary facts to authorize service by publication, the court does not acquire jurisdiction. And the records in the absence of an appearance must show how jurisdiction is acquired. 9 Neb. 202. 10 Neb. 113. And where the service is void a defendant is not concluded by the recitals in the decree from showing want of jurisdiction. 10 Neb. 114.

SEC. 79. The requirements of this section are satisfied by four successive weekly publications. 1 Neb. 254. Cited 9 Neb. 199.

SEC. 80. Cited 9 Neb. 199.

SEC. 81. Cited 7 Neb. 152.

SEC. 82. Decree of foreclosure may be opened by a defendant who has a defense, if he had no actual notice of the suit. In such case, if sale has been had, the proceeds, if in court, should be retained until final judgment. 10 Neb. 238. This section does not apply to actions for a divorce. 10 Neb. 392.

deemed proper; if service by publication be ordered, the publication shall not be less than four weeks.

**SEC. 84. [Defendants not all served—Proceedings.]**—Where the action is against two or more defendants, and one or more shall have been served, but not all of them, the plaintiff may proceed as follows: *First.* If the action be against defendants jointly indebted upon contract, he may proceed against the defendant served, unless the court otherwise direct. *Second.* If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

**SEC. 85. [Pendency of action—Notice.]**—When the summons has been served, or publication made, the action is pending, so as to charge third persons with notice of its pendency, and while pending, no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title.

**SEC. 86. [Same—Real property—Several counties.]**—When any part of the real property, the subject matter of an action, is situated in any other county or counties than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the clerk's office of such other county or counties, before it shall operate therein as a notice, so as to charge third persons, as provided in the preceding section. It shall operate as such notice, without record, in the county where it is rendered; but this section shall not apply to actions or proceedings under any statute now in force, which does not require such record.

**SEC. 86 a. [Service on real estate agent of non-resident.]**—**SEC. 1.** That it shall be lawful for any person, or corporation, owning or claiming any interest in, or lien upon any real estate lying within this state, to make and file in the office of the county clerk of the county in which such real estate is situated an appointment, in writing, of some person, who shall be a resident of the county in which said lands lie, upon whom process may be sued [served,] in any suit, action or proceeding, concerning or affecting such real estate, to which such owner or claimant shall be made a party. Such appointment shall be acknowledged in the manner provided by law for the acknowledgment of deeds. From and after the filing of such appointment as herein provided, service of any writ, summons, order or notice, in any suit, action or proceeding concerning or affecting such real estate, shall be made upon the person so appointed and designate[d] in such manner as may be provided by law for the service of process upon persons found in this state, and shall be held and taken to be a valid and effectual service upon such owner or claimant. A copy of such appointment, or of the record thereof, duly certified by the said clerk, shall be deemed sufficient evidence thereof. And no service made by publication shall be valid in respect to any such owner or claimant, who shall have filed an appointment under the provisions of this act; *Provided,* That such appointment may be at any time revoked by such owner or claimant, but such revocation shall be in writing, duly acknowledged and filed, and recorded in the office of the county clerk in which the appointment shall have been filed and recorded, but such revocation shall not affect any suit or proceedings commenced before the same shall have been recorded; *And provided further,* That this act shall in no wise affect any action or proceeding which shall have been commenced before the passage hereof, in which service of process shall have been made in accordance with the law in force at the time of its commencement. [1877 § 1, 17.]

**SEC. 86 b. [Record.]**—**SEC. 2.** That the county clerk of each county shall keep a book in which he shall record such appointments as shall be filed under the provisions of this act and any revocation thereof, and shall be entitled to demand and receive therefor, a fee of seventy-five cents, and ten cents for each folio of one hundred words contained therein. [Id. § 2.]

SEC. 86 a, b. "An act in relation to the service of process in certain actions concerning real estate." Passed Feb. 15. Took effect June 1, 1877. Laws p. 17.

## TITLE VI.—JOINDER IN ACTIONS.

SEC. 87. [What causes joinable.]—The plaintiff may unite several causes of action in the same petition, whether they be such as have heretofore been denominated legal, or equitable, or both, when they are included in either of the following classes: *First.* The same transaction or transactions connected with the same subject of action. *Second.* Contracts, express or implied. *Third.* Injuries, with or without force, to person and property, or either. *Fourth.* Injuries to character. *Fifth.* Claims to recover the possession of personal property, with or without damages for the withholding thereof. *Sixth.* Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same. *Seventh.* Claims against a trustee by virtue of a contract or by operation of law. [Amended 1867, 71.]

SEC. 88. [Same Parties—Place of trial.]—The causes of action so united must affect all the parties to the action, and not require different places of trial.

## TITLE VII.—PLEADINGS IN CIVIL ACTIONS.

## PLEADINGS IN GENERAL.

SEC. 89. [Pleadings defined.]—The pleadings are the written statements, by the parties, of the facts constituting their respective claims and defenses.

SEC. 90. [Sufficiency, how determined.]—The rules of pleading heretofore existing in civil actions are abolished, and hereafter the forms of pleading in civil actions in courts of record, and the rules by which their sufficiency may be determined, are those prescribed by this code.

SEC. 91. [Pleadings allowed.]—The only pleadings allowed are:—*First.* The petition by the plaintiff. *Second.* The answer or demurrer by the defendant. *Third.* The demurrer, or reply by the plaintiff. *Fourth.* The demurrer to the reply, by the defendant.

## THE PETITION.

SEC. 92. [Contents.]—The petition must contain—*First.* The name of the

SEC. 87. A petition to obtain the correction of an official bond, and to recover a money judgment for a breach thereof is not bad by reason of a misjoinder. 4 Neb. 565. In a real action, a demand for use and occupation, and for damages caused by a tortious injury to the premises, may be included in the petition. 4 Neb. 586. But in such case if defendant is a trustee, *quære*. A petition alleging in one count that shares of stock were purchased at judicial sale under a parol agreement to hold the same in trust for the plaintiff etc., and in another, that the court making the sale was without jurisdiction, but the defendant under color thereof procured a transfer of the shares on the books of the company, and received dividends in trust for plaintiff, is not bad by reason of misjoinder. 4 Neb. 394. A petition upon a note reciting the consideration and disposition of property for which it was given, but not alleging that there was a "wrongful conversion" of the property is not subject to objection by demurrer on the ground that "an action on a promissory note and an action of trover are improperly joined." 4 Neb. 263. The causes of action must be existing, not merely prospective. 9 Neb. 482. A petition setting up an account stated, and execution of a note for balance states but a single cause of action. 10 Neb. 55. A treasurer gave two bonds during same term of office. In an action on both bonds for a default occurring after execution of second, *held* that they were properly joined. 10 Neb. 408. A firm did business as J. W. D. & Associates, and also as D. S. & Co., *held* in an action against a member of the firm, upon a judgment against each firm, that judgments could be joined in one action. 10 Neb. 260.

SEC. 90. Pleadings should present a certain specific issue, and such issue is the only subject matter on which the jury have to pass. 5 Neb. 37. The sufficiency of pleadings not amounting to such omissions as constitute no ground of action or defense, must be objected to by motion and not by demurrer. 3 Neb. 86. An ambiguous pleading is not for that reason liable to demurrer. The remedy is by motion to make it more certain. 1 Neb. 203. 2 Neb. 267, and see 4 Neb. 263. 7 Neb. 237.

SEC. 92. Plaintiff cannot go to answer for facts which by his petition he did not put in issue. 1 Neb. 296. Allegata et probata must agree. 5 Neb. 331, 362. Relief conformable to case made by petition. *Id.* But if petition is defective for want of a material averment, and such averment is supplied by the answer the defects in the petition are cured. 6 Neb. 272. A petition alleging issue and non-payment of a county warrant must also show that there is money in treasury for its payment, or that time has elapsed for its collection by taxation. 1 Neb. 384. A petition which seeks to have a trust declared, should set forth all the circumstances and facts attending the transaction. 3 Neb. 61. In a petition for breach of covenants of warranty it is necessary to allege an eviction by title paramount. It is not sufficient to merely negative the words of the covenant. 3 Neb. 85. In a petition to redeem lands sold under mortgage it must appear affirmatively that the party claiming the equity of redemption was not made a defendant in the foreclosure suit. 4 Neb. 100. Although an action for malicious prosecution cannot be maintained, if the proceedings complained of were had by a court having no jurisdiction, yet a petition alleging that in consequence of such proceedings plaintiff was arrested, imprisoned, etc., is sufficient as a complaint for false imprisonment. 4 Neb. 128. A petition headed "Supreme court of New York," and filed in a district court of this state, is not sufficient to warrant the dissolution of an attachment issued in the cause. 4 Neb. 381. A legislative act set forth the requisites of a petition to be filed in certain tax proceedings. *Held*, that a petition which conformed substantially to the requirements of the act was sufficient. 4 Neb. 507. In an action upon contract containing conditions precedent, the plaintiff must

court and county in which the action is brought, and the names of the parties, plaintiff and defendant. *Second.* A statement of the facts constituting the cause of action, in ordinary and concise language, and without repetition. *Third.* A demand of the relief to which the party supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated; and if interest thereon be claimed, the time from which interest is to be computed shall also be stated.

**SEC. 93. [Causes of action separately stated.]**—Where the petition contains more than one cause of action, each shall be separately stated and numbered.

**SEC. 94. [Demurrer—Grounds of.]**—The defendant may demur to the petition only when it appears on its face: *Either—First.* That the court has no jurisdiction of the person of the defendant, or the subject of the action. *Second.* That the plaintiff has not legal capacity to sue. *Third.* That there is another action pending between the same parties for the same cause. *Fourth.* That there is a defect of parties, plaintiff or defendant. *Fifth.* That several causes of action are improperly joined. *Sixth.* That the petition does not state facts sufficient to constitute a cause of action.

**SEC. 95. [Same—Distinctly stated.]**—The demurrer shall specify distinctly the grounds of objection to the petition. Unless it do so, it shall be regarded as objecting only that the petition does not state facts sufficient to constitute a cause of action.

**SEC. 96. [Waiver—Jurisdiction—No cause of action.]**—When any

aver performance in order to show a cause of action against defendant, unless he aver all facts necessary to show a waiver of the conditions precedent, and fix the defendants liability without such performance on his part. 5 Neb. 64, 78, 81. [See sec. 138, p. 156.] In an action on an undertaking in attachment, the petition should allege that the order of attachment was wrongfully sued out or obtained. It is not enough to state that the attachment was quashed and property released by proceedings in error. 5 Neb. 471. In an action for the rescission of a contract on the ground of fraud, the particular circumstances which constitute the alleged fraud must be stated in the petition. 6 Neb. 135. An averment that a claim against a county "was unjust and was allowed through fraudulent and undue means," is insufficient for either the admission of proof or the entry of a decree establishing fraud. 6 Neb. 201. In an action for libel plaintiff must aver and prove special damages, unless the words used are actionable per se. 6 Neb. 259. And see *Fisch v. Viquan*, 11 Neb. An objection to admission of evidence on the ground that the petition does not state a cause of action, may be taken at any time during the trial. 7 Neb. 317. A party proceeding to trial on a petition which does not state a cause of action, cannot after verdict and motion to set same aside, take judgment by then filing a petition setting up a cause of action. *Id.* Where a conclusion of law contains a fact constituting a cause of action or one which is essential to enable plaintiff to maintain suit, the defendant may move to have the petition made definite, but cannot strike out such matter as redundant and irrelevant. 7 Neb. 463. Where there is an omission to state a material fact, one necessary to show a cause of action, the presumption is that it does not exist. 4 Neb. 307. 7 Neb. 497. In an action upon a written instrument consisting of several distinct parts, only so much of it need be set out as is necessary to show a right of action. A copy of such instrument should be attached to the petition. 8 Neb. 214. The petition in an action on an official bond, alleging that the acts complained of were done by the officer while in the performance of an official duty is not subject to demurrer because of an additional averment that it was done "under color of his said office." 8 Neb. 348. Where an action is brought on a written instrument by one not a party to it, his interest must be made to appear in the petition. 8 Neb. 468. Use of the word "as" in an allegation "that said defendant refused and neglected to cut plaintiff's wheat as defendant had agreed and contracted"—commented upon. 9 Neb. 80. A petition stating but one cause of action, but divided into numbered paragraphs is good against a motion to strike out "the first third and fourth counts," etc. 9 Neb. 210. Where a petition states a good cause of action the merits of the demand cannot be questioned on a motion to dissolve an attachment issued in the case. 9 Neb. 236. Resort may be had to prayer of petition to determine true character of action. 10 Neb. 187. Where an action is brought for the purchase price of property sold it should appear from the petition that the debt is due. 10 Neb. 269. Where the action is founded upon a promise or duty the petition must allege non-performance. *Id.* In a petition to recover damages by neglect of clerk to properly enter transcript of judgment on the judgment record, so as to create a lien on real estate of the defendant, it is not necessary to allege that an execution had been issued on the judgment, and returned unsatisfied, but an allegation showing that the defendant owned no other property than that on which the lien was sought, and that owing to such neglect this has become lost to him, is sufficient. 10 Neb. 528. In an action to subrogate plaintiff to rights of mortgagee in a chattel mortgage, given as an indemnity, it is not necessary that petition should negative the fact of said mortgage having been discharged of record. 10 Neb. 431. For decisions relative to petitions in mortgage cases see note to sec. 845. For decisions relative to petitions in particular cases see 3 Neb. 51; 4 Neb. 447; 6 Neb. 272; 7 Neb. 315; 8 Neb. 120, 211, 331; 9 Neb. 109, 212, 230, 317, 390, 480; 10 Neb. 162, 280.

**SEC. 94.** Statute of limitations may be interposed by demurrer if face of petition shows that cause of action is barred. 5 Neb. 464. 6 Neb. 392. 9 Neb. 232. Otherwise, not. 3 Neb. 87. If objections are not those stated in this section, the demurrer will be considered as general that petition does not state a cause of action. 3 Neb. 52. And the court in its decision should confine itself to that single objection. 6 Neb. 84. If a party demurring answer over and go to trial on merits, he waives his exceptions to demurrer. 2 Neb. 308. 3 Neb. 223. See note to sec. 109. A party standing upon demurrer admits all material facts averred. 3 Neb. 321. In determining whether a demurrer should be sustained to an amended petition, which covers same ground as original, the court will not look beyond the pleading against which the demurrer is directed. And the fact that the amended petition predicates the right to recover upon a fact which did not exist when the original petition was filed is no ground for demurrer. 5 Neb. 502. A joint demurrer by several defendants will be overruled, if it state a cause of action against any of them. 9 Neb. 515. *Missouri Valley Land Co. v. Bushnell*, 11 Neb. Failure to attach copy of bond sued on is not ground for demurrer. 10 Neb. 527.

of the defects enumerated in section ninety-four do not appear upon the face of the petition, the objection may be taken by answer; and if no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, except only the objection to the jurisdiction of the court, and that the petition does not state facts sufficient to constitute a cause of action.

SEC. 97. [**Misjoinder—Separation.**—When a demurrer is sustained on the ground of misjoinder of several causes of action, the court, on motion of the plaintiff, shall allow him, with or without costs in its discretion, to file several petitions, each including such of said causes of action as might have been joined; and an action shall be docketed for each of said petitions, and the same shall be proceeded in without further service.

SEC. 98. [**Demurrer in part—Answer in part.**—The defendant may demur to one or more of the several causes of action stated in the petition, and answer as to the residue.

SEC. 99. [**Contents.**—The answer shall contain: *First.* A general or specific denial of each material allegation of the petition controverted by the defendant. *Second.* A statement of any new matter constituting a defense, counter-claim, or set-off, in ordinary and concise language, and without repetition.

SEC. 100. [**Several grounds of defense.**—The defendant may set forth in his answer as many grounds of defense, counter-claim and set-off as he may have. Each must be separately stated and numbered, and they must refer in an intelligible manner to the cause of action which they are intended to answer.

SEC. 101. [**Counter-claim.**—The counter-claim mentioned in the last section, must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the contract or transaction set forth in the petition as the foundation of the plaintiff's claim, or connected with the subject of the action.

SEC. 102. [**Same—Omission—Effect—Costs.**—If the defendant omit to set up the counter-claim or set-off, he cannot recover costs against the plaintiff in any subsequent action thereon; but this section shall not apply to causes of action which are stricken out of or withdrawn from the answer, as provided in sections one hundred and three and one hundred and twenty-six.

SEC. 103. [**Same—New party.**—When it appears that a new party is necessary to a final decision upon the counter-claim, the court may either permit the new party to be made, by a summons, to reply to the counter-claim, or may direct the counter-claim to be stricken out of the answer, and made the subject of a separate action.

SEC. 104. [**Set-off.**—A set-off can only be pleaded in an action founded on

SEC. 99. Denials must be direct and unambiguous. 4 Neb. 523. 5 Neb. 37. Upon a general denial the simple question is has the plaintiff proved the allegations of his petition. 5 Neb. 37. 7 Neb. 37. All new matter in defense, and every defense, partial or entire, must be set up and is not admissible under a general denial. 5 Neb. 125, 362. 7 Neb. 38. But actions of replevin are not within the rule. 5 Neb. 38, 102. 9 Neb. 486. A general denial is a good plea to an allegation of adultery. 6 Neb. 306. If an estoppel be relied on as a defense it must be pleaded. 8 Neb. 142. A general denial does not put in issue the corporate character of a plaintiff corporation, or its power to sue. 8 Neb. 455. Taking leave to answer is a waiver of objections to the manner in which previous orders of the court as to the itemization of an account sued on has been performed, no exception thereto having been taken. 8 Neb. 204. Matter constituting a defense will not be stricken out on motion as "irrelevant." 9 Neb. 321. Allegations which raise an issue of fact, cannot be stricken out on the ground that they are untrue as shown by the records of the court. Id. An averment, that defendant received "no consideration" for note sued on is nullified by facts in same answer showing there was a good consideration. 10 Neb. 208. An averment, concerning notice to a seller of machines, which omits to state of what the notification consisted, is no defense to an action on a note given in payment. Id. Action on a note by payee. Defendant answered a former suit by another person, but did not allege that payee had disposed of note to plaintiff in that suit. Held no defense. 8 Neb. 505. A party cannot avail himself of the benefits of a plea in bar, or of a former recovery, by exceptions to testimony, or by motion subsequent to the trial. Such defenses must be pleaded. 6 Neb. 441.

SEC. 101. In an action by a mortgagee to recover amount remaining unsatisfied of mortgage debt, the mortgagor may set up counter-claim for waste by mortgagee in possession between decree and sale. 2 Neb. 12.

SEC. 104. Mutual judgments cannot be set-off. 3 Neb. 166. The power to do so however seems to be discretionary with the court to be exercised so as to do equity. But the actual debts must exist in same right. Id. An incumbrance by way of taxes must be first paid before vendee can plead same as a set-off in an action to recover purchase money. 4 Neb. 194. But see 5 Neb. 432, and as to any lawful incumbrances 9 Neb. 539. The insolvency of a party against whom a set-off is claimed is a sufficient ground for equity to decree such set-off in cases not provided for by statute. 5 Neb. 301. Set-off to a note which is good between original parties may be plead against indorsee who acquires it after maturity. 7 Neb. 82, 84. The maker may set off any liquidated

contract, and must be a cause of action arising upon contract, or ascertained by the decision of the court.

**SEC. 105. [Same—New party.]**—When it appears that a new party is necessary to the final decision upon the set-off, the court shall permit the new party to be made, if it also appear that owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim, unless permitted to use it as a set-off.

**SEC. 106. [Cross demands, compensated—Assignment.]**—When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counter-claim or set-off could have been set up, neither can be deprived of the benefit thereof by the assignment or death of the other, but the two demands must be deemed compensated, so far as they equal each other.

**SEC. 107. [Answer of guardian—Attorney.]**—The guardian of an infant or person of an unsound mind, or attorney for a person in prison, shall depy in the answer all material allegations of the petition prejudicial to such defendant.

#### REPLY.

**SEC. 108. [Repealed. Gen. Stat. 713.]**

**SEC. 109. [Demurrer—Reply.]**—The plaintiff may demur to one or more of the defenses set up in the answer, stating in his demurrer the grounds thereof, and where the answer contains new matter, the plaintiff may reply to such new matter denying generally or specifically, each allegation controverted by him; and he may allege, in ordinary and concise language, and without repetition, any new matter, not inconsistent with the petition, constituting a defense to such new matter in the answer. [R. S. 411. Amended to take effect Sept. 1, 1878. G. S. 541.]

#### GENERAL RULES OF PLEADING.

**SEC. 110. [Time of filing.]**—The answer or demurrer of the defendant shall be filed on or before the third Monday, and the reply or demurrer of the plaintiff on or before the fifth Monday after the return day of the summons, or service by publication.

**SEC. 111. [Same—Extended.]**—The court, or the judge thereof in vacation, for good cause shown, may extend the time for filing an answer or reply, upon such terms as may be just.

**SEC. 112. [Subscribed by party or attorney.]**—Every pleading in a court of record must be subscribed by the party, or his attorney.

**SEC. 113. [Verification.]**—Every pleading of fact must be verified by the affidavit of the party, his agent or attorney. A pleading verified as herein required, shall not be used against a party in any criminal prosecution or action, or proceeding for a penalty or forfeiture, as proof of a fact admitted or alleged in

demand which he held against payee at time of assignment but claims subsequently acquired, even though they had their origin in previous transactions, are not the subject of set-off. 7 Neb. 88. In an action against a city for gaslight furnished by contract, delinquent taxes are not proper subject of set-off under the law as it stood prior to the act of 1879 providing a system of revenue. See ante p. 400. 9 Neb. 345.

**SEC. 109.** Prior to the amendments of this and sec. 134, it was held that no reply to new matter in answer was necessary, unless it constitutes a counter-claim or set-off. 2 Neb. 289. Demurrer to answer should state grounds therefor. If not it will be considered as general. 4 Neb. 430. Demurrer admits as true all new matter plead in answer. 5 Neb. 432. Reply must be made to all material allegations of new matter in answer or they will be taken as true. 5 Neb. 485. 6 Neb. 218. 9. Neb. 321. A party demurring, in order to avail himself of exceptions taken to an order overruling demurrer, must rest thereon. If he reply he waives the exception. But this rule does not apply where the facts stated in the answer of themselves constitute no defense. 7 Neb. 240.

**SEC. 110.** When to a defendant in default for want of answer, the time is given which is fixed by statute he has to the third Monday following to answer and no longer. 1 Neb. 106, and see 1 Neb. 359, for rule under former chancery practice. Party in default may be permitted to answer at any time before judgment is rendered; and if it appear that he has a meritorious defense to the action, the court must permit the answer to be filed. 7 Neb. 156.

**SEC. 111.** Order of court in making up pleadings to which no exception is taken, will not be reviewed on error. 6 Neb. 351.

**Secs. 112-113.** The failure to sign and verify a petition is no ground for dismissing the action. The proper practice is to file a motion to strike it from the files. 6 Neb. 435. Verification not necessary in order to vest jurisdiction. 2 Neb. 136. The verification need only be that the party believes the facts stated in the pleading to be true. 4 Neb. 523. See section 116. Petition in error need not be verified. 9 Neb. 505.

such pleading; and such verification shall not make other or greater proof necessary on the side of the adverse party.

SEC. 114. [**Same—Exceptions.**].—The verification mentioned in the last section shall not be required to the answer of a guardian defending for an infant or person of unsound mind, or a person imprisoned; nor in any case where the admission of the truth of a fact stated in the pleading might subject the party to a criminal or penal prosecution.

SEC. 115. [**Same—Several parties.**].—If there be several persons united in interest and pleading together, the affidavit may be made by any one of such parties.

SEC. 116. [**Same—Contents.**].—The affidavit shall be sufficient if it state that the affiant believes the facts stated in the pleading to be true.

SEC. 117. [**Same—Non-resident.**].—In all cases where the party pleading is a non-resident of the county in which the action is brought, or if he shall be absent from the county where the pleading is filed, an affidavit made before filing the pleading, stating the substance of the facts afterwards inserted in the pleading, shall be a sufficient verification. Such affidavit shall be filed with the pleading intended to be verified thereby.

SEC. 118. [**Same—Before whom.**].—The affidavit verifying pleadings may be made before any person before whom a deposition might be taken, and must be signed by the party making the same; and the officer before whom the same was taken, shall certify that it was sworn to or affirmed before him, and signed in his presence. The certificate of such officer signed officially by him, shall be evidence that the affidavit was duly made, that the name of the officer was written by himself, and that he was such officer.

SEC. 119. [**Same—Amount claimed.**].—The verification of a pleading does not apply to the amount claimed, except in actions founded on contracts, express or implied, for the payment of money only.

SEC. 120. [**Same—By agent—Attorney.**].—When the affidavit is made by the agent or attorney, it must set forth the reason why it is not made by the party himself. It can be made by the agent or attorney only: *First.* When the facts are within the personal knowledge of the agent or attorney. *Second.* When the plaintiff is an infant, or of unsound mind, or imprisoned. *Third.* When the pleading to be verified is founded upon a written instrument for the payment of money only, and such instrument is in the possession of the agent or attorney. *Fourth.* When the party is not a resident of, or is absent from the county. *Fifth.* When the party is a corporation, in which case it may be made by the attorney, or any officer or agent upon whom a summons could be legally served. [Amended 1875, 84. Took effect Feb. 24, 1875.]

SEC. 121. [**Pleadings liberally construed.**].—In the construction of any pleading, for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties.

SECS. 122-123. [**Repealed. Gen. Stat. 713.**]

SEC. 124. [**Copies instrument sued on.**].—If the action, counter-claim, or set-off be founded on an account, or on a note, bill, or other written instrument, as evidence of indebtedness, a copy thereof must be attached to and filed with the pleading, except in actions founded upon notes issued to circulate as money. If not so attached and filed, the reason thereof must be shown in the pleading.

SEC. 125. [**Matter stricken out.**].—If redundant, scandalous, or irrelevant matter be inserted in any pleading, it may be stricken out on motion of the party prejudiced thereby. And when the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.

SEC. 120. Amendment consists in the addition of the fifth subdivision. The section applies to all pleadings whether the relief is sought at law or in equity. 3 Neb. 116.

SEC. 121. See 2 Neb. 267. 3 Neb. 311.

SEC. 124. Cited 10 Neb. 527.

SEC. 125. Cited 2 Neb. 267.



**SEC. 126. [Counter-claim—Set-off—Withdrawn.]**—The court, at any time before the final submission of the cause, on motion of the defendant, may allow a counter-claim or set-off, set up in the answer, to be withdrawn, and the same may become the subject of another action. On motion of either party, to be made at the time such counter-claim or set-off is withdrawn, an action on the same shall be docketed and proceeded in as in like cases after process served; and the court shall direct the time and manner of pleading therein. If an action be not so docketed, it may afterwards be commenced in the ordinary way.

**SEC. 127. [Judgment, how plead.]**—In pleading a judgment, or other determination of a court or officer of special jurisdiction, it shall be sufficient to state that such judgment or determination was duly given or made. If such allegation be controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction.

**SEC. 128. [Conditions precedent.]**—In pleading the performance of conditions precedent in a contract, it shall be sufficient to state that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading must establish on the trial, the facts showing such performance.

**SEC. 129. [Action on negotiable instrument.]**—In an action, counter-claim or set-off, founded upon an account, promissory note, bill of exchange or other instrument, for the unconditional payment of money only, it shall be sufficient for the party to give a copy of the account or instrument, with all credits and endorsements thereon, and to state that there is due to him on such account or instrument, from the adverse party, a specified sum, which he claims with interest. When others than the makers of a promissory note, or the acceptors of a bill of exchange, are parties in the action, it shall be necessary to state also the kind of liability of the several parties, and the facts, as they may be, which fix their liability.

**SEC. 130. [Private statute.]**—In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

**SEC. 131. [Libel—Slander.]**—In an action for libel or slander, it shall be sufficient to state, generally, that the defamatory matter was published or spoken of the plaintiff, and if the allegation be denied, the plaintiff must prove on the trial the facts, showing that the defamatory matter was published or spoken of him.

**SEC. 132. [Same—Defense—Truth.]**—In the actions mentioned in the last section, the defendant may allege the truth of the matter charged as defamatory, and may prove the same, and any mitigating circumstances to reduce the amount of damages, or he may prove either.

**SEC. 133. [Real property—Description.]**—In an action for the recovery of real property, it shall be described with sufficient certainty to enable an officer holding an execution to identify it.

**SEC. 134. [Allegations taken as true.]**—Every material allegation of the petition not controverted by the answer, and every material allegation of new matter in the answer, not controverted by the reply, shall, for the purpose of the action, be taken as true; but the allegation of new matter in the reply, shall be deemed controverted by the adverse party, as upon a direct denial or avoidance. Allegations of value, or of amount of damage, shall not be considered as true by failure to controvert them. [Amended to take effect Sept. 1, 1873. G. S. 545.]

**SEC. 135. [Material allegation, defined.]**—A material allegation in a pleading is one essential to the claim or defense, which could not be stricken from the pleading without leaving it insufficient.

SEC. 129. See 10 Neb. 269, and note to sec. 92.

SEC. 134. Cited 2 Neb. 287. 4 Neb. 523. 8 Neb. 78. 9 Neb. 321. An instruction that "any allegation in the petition which is not denied in the answer, must be taken as admitted and true," held good. 5 Neb. 215. An allegation that one of several defendants, joint maker of a note, was in reality only a surety thereon, there being no reply will be taken as true. 5 Neb. 488. When new matter set up in the answer is denied by reply, burden of proof is on defendant. 6 Neb. 219. If answer sets up payment by a sale of property to plaintiff and replication so admits, but alleges payment of purchase price to third parties at request of defendant, the burden of proof rests on plaintiff. 10 Neb. 2.

**SEC. 136. [Judicial notice.]**—Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in the pleading.

**SEC. 137. [Original pleading lost.]**—If an original pleading be lost, or withheld by any person, the court may allow a copy thereof to be substituted.

#### MISTAKES IN PLEADINGS, AND AMENDMENTS.

**SEC. 138. [Variance—When not material.]**—No variance between the allegation in a pleading and the proof, is to be deemed material, unless it have actually misled the adverse party to his prejudice, in maintaining his action or defense upon the merits. Whenever it is alleged that a party has been so misled, that fact must be proved to the satisfaction of the court, and it must also be shown in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as may be just.

**SEC. 139. [Same—Amendment.]**—Whenever the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, and may order an immediate amendment without costs.

**SEC. 140. [Same—Failure of proof.]**—When, however, the allegation of the claim or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

**SEC. 141. [Petition amended before answer.]**—The plaintiff may amend his petition without leave, at any time before the answer is filed, without prejudice to the proceeding; but notice of such amendment shall be served upon the defendant, or his attorney, and the defendant shall have the same time to answer or demur thereto as to the original petition.

**SEC. 142. [Amendment after demurrer—Notice.]**—At any time within ten days after a demurrer is filed, the adverse party may amend, of course, on payment of costs since filing the defective pleading. Notice of filing an amended pleading shall be forthwith served upon the other party, who shall have the same time thereafter to answer, or reply thereto, as to an original pleading.

**SEC. 143. [Demurrer overruled—Answer—Reply.]**—Upon a demurrer being overruled, the party who demurred may answer or reply, if the court be satisfied that he has a meritorious claim or defense, and did not demur for delay.

**SEC. 144. [Amendments in furtherance of justice.]**—The court may, either before or after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved. And whenever any

**SEC. 141.** An alias summons is not necessary by filing of an amended petition. 6 Neb. 351.

**SEC. 142.** This section refers to amendments out of term and without leave of court, but not to amendments made in open court by leave of court. 8 Neb. 445.

**SEC. 143.** The defendant may be required to plead *instanter*. 9 Neb. 310.

**SEC. 144.** Defective verification may be amended. 2 Neb. 136. So may a defective appeal bond, in appellate court, with consent of sureties. 3 Neb. 121. An amendment to summons by correction of a mistake in name of plaintiff relates back to the time of service. 4 Neb. 177. In an action against partnership, if it appear that the transaction mentioned in petition was with one member of firm only, petition may be amended accordingly. 6 Neb. 495. If a suitor has been deprived of a substantial right by refusal of court to permit an amendment, the supreme court will grant relief. But application to amend should be made before cause is dismissed. The better practice is to make the order conditional that, in case of failure to amend in time and on terms prescribed, the action be dismissed. 7 Neb. 53. If a plea of usury is defective in its statement of facts and testimony is introduced without objection, showing existence of a usurious contract, the court after verdict will permit answer to be amended to conform to facts proved. 7 Neb. 58. If during trial the court permit an amended petition to be filed, and defendant objects to the introduction of evidence thereunder on the ground that such petition does not state a cause of action, and the court overrules the objection and admits the testimony, it is error for the court to afterwards permit the plaintiff to file an amended petition conformable to the facts proved. 7 Neb. 320. But this rule does not apply when testimony is admitted without objection. 8 Neb. 318. A note was changed by a payee from \$217.36 to \$208.12, and transferred before maturity to an innocent holder. *Held*, That as the alteration was not made with a fraudulent intent, a recovery could be had upon the original consideration, and petition amended accordingly. 9 Neb. 5. When the plaintiff, under leave to file an amended petition, filed one in which there was a complete abandonment of his original cause of action, and the substitution of a new and entirely distinct one, to which the defendant made no objection until after judgment against him by proceedings in error, *held*, that the objection came too late, and was waived by the failure to make it in the trial court. 10 Neb. 416. Power of court to amend and correct record. 6 Neb. 281.

proceeding taken by a party fails to conform, in any respect, to the provisions of this code, the court may permit the same to be made conformable thereto, by amendment. [Amended 1875, 35. Took effect Feb. 4, 1875.]

SEC. 145. [Immaterial errors disregarded.]—The court, in every stage of an action, must disregard any error or defect in the pleadings or proceedings, which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

SEC. 146. [Demurrer sustained—Amendment.]—If the demurrer be sustained, the adverse party may amend, if the defect can be remedied by way of amendment, with or without costs, as the court in its discretion shall direct.

SEC. 147. [Continuance upon amendment.]—When either party shall amend any pleading or proceeding, and the court shall be satisfied, by affidavit, or otherwise, that the adverse party could not be ready for trial in consequence thereof, a continuance may be granted to some day in term, or to another term of the court.

SEC. 148. [Unknown defendants—Designations.]—When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name and description, and when his true name is discovered, the pleading or proceeding may be amended accordingly. The plaintiff in such case must state, in the verification of his petition, that he could not discover the true name, and the summons must contain the words "real name unknown," and a copy thereof must be served personally upon the defendant.

SEC. 149. [Supplemental pleadings.]—Either party may be allowed, on notice, and on such terms as to costs as the court may prescribe, to file a supplemental petition, answer or reply, alleging facts material to the case, occurring after the former petition, answer, or reply.

SEC. 150. [Actions consolidated.]—Whenever two or more actions are pending in the same court which might have been joined, the defendant may, on motion and notice to the adverse party, require him to show cause why the same shall not be consolidated, and if no such cause be shown, the said several actions shall be consolidated.

SEC. 151. [Same—Order.]—The order for consolidation may be made by the court or by a judge thereof in vacation.

## TITLE VIII.—PROVISIONAL REMEDIES.

### CHAPTER I.—ARREST AND BAIL.

SEC. 152. [Arrest—When made.]—A defendant in a civil action can be arrested before and after judgment, in the manner prescribed by this code, and not otherwise; but this provision does not apply to proceedings for contempt, nor does it apply to actions or judgments prosecuted in the name of the state of Nebraska, to recover fines or penalties for crimes, misdemeanors, or offenses.

SEC. 153. [Affidavit—Order.]—An order for the arrest of the defendant shall be made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, made before any judge of any court of the state or clerk thereof, or justice of the peace, stating the nature of the plaintiff's claim, that it is just, and the amount thereof, as nearly as may be, and establishing one or more of the following particulars: *First.* That the defendant has removed, or begun to remove, any of his property out of the jurisdiction of the court, with intent to defraud his creditors. *Second.* That he has begun to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors. *Third.* That he has property or rights of action, which he fraudulently conceals. *Fourth.* That

SEC. 147. Affidavit for a continuance to procure evidence must show testimony which affiant expects will be given by absent party. 1 Neb. 118. Application for continuance is addressed to the sound discretion of court. 5 Neb. 190. Counter affidavits not proper. 6 Neb. 337. An affidavit that defendant has been informed that a person absent from the state would swear to certain material facts is insufficient. *Id.* If a party obtain leave to amend in open court no notice thereof need be served on opposite party, and if the opposite party desire time to answer amended pleading he must apply for it. 8 Neb. 415.

SEC. 152. Cited 2 Neb. 15. And see Const., sec. 20, p. 16.

he has assigned, removed, disposed of, or has begun to dispose of his property, or a part thereof, with intent to defraud his creditors. *Fifth.* That he fraudulently contracted the debt or incurred the obligation for which the suit is about to be or has been brought. The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars.

SEC. 154. [**Bond.**].—The order of arrest shall not be issued by the clerk until there has been executed, by one or more sufficient sureties of the plaintiff, a written undertaking, to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained, not exceeding double the amount of the plaintiff's claim stated in the affidavit.

SEC. 155. [**Order—When issued.**].—The order may be made to accompany the summons, or at any time afterwards, before judgment.

SEC. 156. [**Same—Contents.**].—The order of arrest shall be addressed and delivered, with a copy of the affidavit, to the sheriff. The order shall state the names of the parties, the court in which the action was brought, and the amount of the plaintiff's claim specified in the affidavit, and shall require the sheriff to arrest the defendant, and hold him to bail in double the sum stated in the affidavit, and to make return of the order on a day to be named therein, with the undertaking of the bail, if any be given.

SEC. 157. [**Same—Returnable.**].—The return day of the order of arrest, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be fifteen days after it issued.

SEC. 158. [**Same—Execution.**].—The sheriff shall execute the order by arresting the defendant, and delivering to him a copy thereof, and of the affidavit. If the defendant cannot be found before the return day, the plaintiff shall be entitled to further orders without other affidavit or undertaking, until the defendant is arrested; but orders of arrest shall not be issued to any other than the county in which the action is brought.

SEC. 159. [**Arrest—Committal.**].—The defendant, when arrested, shall be committed by the sheriff to the jail of the county, and kept in custody until discharged by law.

SEC. 160. [**Release—Payment of claim.**].—The defendant may, before or after giving bail, deposit in the hands of the sheriff, or in the court, the amount of money mentioned in the order of arrest; whereupon he shall be discharged, or his bail, if any be given, shall be released.

SEC. 161. [**Same—Payment into court.**].—The sheriff shall pay into court the money received by him in lieu of bail; if received in vacation, he shall pay it on the first day of the next term; if received during a term, he shall pay it immediately.

SEC. 162. [**Same—Disposition of money.**].—The court shall make proper orders for the safe keeping of money deposited in lieu of bail. It may direct the sheriff to keep the money, and after final judgment in the action, shall order it to be paid to the party entitled thereto, according to the result.

SEC. 163. [**Same—Liability of sheriff.**].—Money so deposited with the sheriff, in lieu of bail, or directed by the court to be kept by him, shall be held upon his official responsibility; and he and his sureties shall be liable, and may be proceeded against, for any default in relation thereto, as in other cases of delinquency.

SEC. 164. [**Bail—When allowed.**].—Bail may be given by the defendant on his arrest, or at any time afterwards, before judgment. It shall be done by causing one or more sufficient bail to execute a written undertaking to the plaintiff, in the presence of the sheriff, to the effect that, if judgment shall be rendered in the action against the defendant, he will render himself amenable to the process of the court thereon. The undertaking, when accepted, shall be returned to the clerk's office, and the defendant discharged.

SEC. 165. [**Same—Objections.**].—The plaintiff, or his attorney, may object to the bail for insufficiency, at any time within ten days after the undertaking of the bail has been given; within such time he shall serve upon the sheriff a written notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability. When the undertaking is given after the return of the order of arrest, the plaintiff shall have notice thereof.

SEC. 166. [**Same—Justification.**].—On the receipt of such notice the sheriff or defendant may, within ten days thereafter, give to the plaintiff, or his attorney, notice, in writing, of the justification of the same or other bail, before a judge, or clerk of the court, in which the action is brought, a probate judge, or justice of the peace, at a specified time and place; the time to be not less than five nor more than ten days thereafter. In case other bail be given there must be a new undertaking.

SEC. 167. [**Same.**].—For the purpose of justification, each of the bail must attend before the proper officer at the time and place mentioned, and may be examined on oath or affirmation touching his sufficiency, in such manner as the officer may think proper.

SEC. 168. [**Same—Sufficiency—Proceedings.**].—If the officer finds the bail sufficient, he shall indorse his allowance on the undertaking, and cause the same to be filed with the clerk; and the sheriff shall thereupon be discharged from liability.

SEC. 169. [**Escape of defendant.**].—If, after being arrested, the defendant escape or be rescued, or bail be not taken, or be adjudged insufficient, or a deposit be not made, the sheriff shall be liable as bail. But he may discharge himself from liability by putting in sufficient bail at any time before judgment.

SEC. 170. [**Same—Liability of sheriff.**].—The return of "not found" upon an execution against the body of the defendant, shall be necessary to fix the liability of the sheriff as bail, which liability shall be the amount of the judgment, interest, and costs. This liability can be enforced only in a separate action against him, or against him and his sureties on his official bond, as in other cases of delinquency.

SEC. 171. [**Bail insufficient—Liability.**].—The bail adjudged insufficient shall be liable to the sheriff for the damages he may sustain by reason of such insufficiency.

SEC. 172. [**Liability of bail, how fixed.**].—The liability of the bail shall be fixed in the manner provided in section one hundred and seventy, for fixing the liability of the sheriff as bail, and the bail can be proceeded against in an action only.

SEC. 173. [**Bail, how discharged.**].—A surrender of the defendant to the sheriff of the county in which he was arrested, with a delivery of a certified copy of the undertaking of the bail, whether such surrender be made by the defendant himself, or by his bail, shall discharge the bail; and such surrender may be made at any time before the return day of the summons in an action against the bail. The sheriff shall give to the bail a written acknowledgment of the surrender, and hold the defendant in his custody, upon said copy of the undertaking of the bail, as upon an order of arrest. On the production of the sheriff's acknowledgment of the surrender, to the clerk of the court, an exoneration of the bail shall be entered on his undertaking.

SEC. 174. [**Same—Arrest of defendant by bail.**].—For the purpose of surrendering the defendant, the bail, at any time or place, before he is finally charged, may himself arrest him, or by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

SEC. 175. [**Bail, how exonerated.**].—The bail will be exonerated by the death of the defendant, or his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process of the court, or by his surrender to the sheriff of the county in which he was arrested in execu-

tion thereof, within the time fixed in section one hundred and seventy-three, or within such further time as the court in which the action is pending may allow.

**SEC. 176. [Bail substituted for money.]**—If money be deposited by the defendant on his discharge, bail may be given and justified upon notice as prescribed in section one hundred and sixty-six, at any time before judgment; and thereupon the court in which the action is brought, on being satisfied that the bail has been given and adjudged sufficient, shall direct that the money deposited be refunded to the defendant, and it must be refunded accordingly.

**SEC. 177. [Stay of proceedings against bail.]**—If, at any time before or after judgment against the bail, proceedings in error are commenced on the judgment against the principal in the suit in which their undertaking was taken, the court may, on motion, stay proceedings against such bail for a reasonable time, on their paying all the costs that have accrued against them; and if, on such proceedings, the judgment against the principal shall be reversed, and the principal discharged from said suit, the bail shall be discharged from the undertaking.

**SEC. 178. [Order to vacate arrest.]**—A defendant arrested may, at any time before the justification of the bail, apply, on motion, to the court in which the suit is brought, if in session, and in vacation to a judge thereof, or to any judge of a court of record of the state, to vacate the order of arrest, or to reduce the amount of bail. Reasonable notice of such motion must be given to the plaintiff.

**SEC. 179. [Same—Affidavits.]**—If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of arrest was made.

**SEC. 180. [Person causing arrest—Liability—Jail fees.]**—Any person causing another to be committed to jail under the provisions of this chapter, shall be liable, in the first instance, for jail fees, and shall, if required by the jailer, pay such fees weekly in advance; and such fees, so paid, shall be a part of the costs of the case.

#### CHAPTER II.—REPLEVIN OF PROPERTY.

**SEC. 181. [Delivery of property—When claimed.]**—The plaintiff in an action to recover the possession of specific personal property, may, at the commencement of the suit, or any time before answer, claim the immediate delivery of such property, as provided in this chapter. [R. S. 421. G. S. 552.]

**SEC. 182. [Order—Affidavit.]**—An order for the delivery of personal property to the plaintiff, shall be made by the clerk of the court in which the action is brought, when there shall be filed in his office an affidavit of the plaintiff, his agent or attorney showing: 1st. A description of the property claimed. 2d. That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the same. 3d. That the property is wrongfully detained by the defendant. 4th. That it was not taken in execution on any order or judgment

**SEC. 181.** A party innocently in possession of property cannot be subjected to costs unless a demand is made for the property, but where defendant pleads property in himself no demand is necessary. 1 Neb. 210. 8 Neb. 114. Replevin will lie for recovery of buildings erected by one claiming title to realty who by judicial determination has been evicted, if buildings were by him set on blocks, and not affixed to soil at time of eviction. 1 Neb. 437. It will not lie to recover property agreed to be exchanged for land if before performance defendant learned of defect in title to such land. 2 Neb. 172. Right of action depending on particular facts stated. 2 Neb. 186. 6 Neb. 464. Possession, with claim of title adverse to the owner, is evidence of conversation, and no demand need be shown to support replevin. 2 Neb. 241. Surety on replevin bond cannot maintain replevin against one wrongfully dispossessing his principal of the property. 7 Neb. 27. Plaintiff must recover on strength of his own title. 10 Neb. 273.

**SEC. 182.** The amendment to this section is by attaching the proviso. An affidavit stating that the property was not taken in execution, etc., but was taken by execution issued "on void judgment," is defective. 7 Neb. 51. Affidavit may be amended. Id. 52. The averments in a petition that plaintiff "has a special property in the goods, that he is entitled to the immediate possession of the same and that they are wrongfully and unjustly detained from him," are mere propositions of law. 7 Neb. 317. The petition should show that plaintiff "has a special property therein," stating its nature. 6 Neb. 272. An answer that defendant "does not unlawfully detain the property," etc., puts in issue the plaintiff's right of property and right of possession. 7 Neb. 293. A general denial is sufficient. 5 Neb. 86, 100. 7 Neb. 236. 8 Neb. 180. 9 Neb. 487.

against said plaintiff; or for the payment of any fine, tax or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other mesne or final process issued against him; *Provided*, That such affidavit may omit the first and last clause of this subdivision and in lieu thereof, show that the property was taken in execution on a judgment or order, other than an order of delivery in replevin, and that the same is exempt from such execution or attachment under the laws of this state; *And provided further*, That the provisions of this act shall extend to and apply as well to proceedings in replevin had before justices of the peace. [Amended 1877, 9. Took effect June 1, 1877.]

SEC. 183. [**Order—Contents.**].—The order for the delivery of the property to the plaintiff shall be addressed and delivered to the sheriff. It shall state the names of the parties, the court in which the action is brought, and command the sheriff to take the property, describing it, and deliver it to the plaintiff, and to make return of the order on a day to be named therein.

SEC. 184. [**Same—Returnable.**].—The return day for the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued.

SEC. 185. [**Same—Execution.**].—The sheriff shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detention of the property, or leave such copy at his usual place of residence.

SEC. 186. [**Bond.**].—The sheriff, or other officer, shall not deliver to the plaintiff, his agent or attorney, the property so taken, until there has been executed, by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant in at least double the value of the property taken, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him, and return the property to the defendant, in case judgment for a return of such property is rendered against him. The undertaking shall be returned with the order. [Amended to take effect Sept. 1, 1873. G.S. 553.]

SEC. 187. [**Same—Appraisal.**].—For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two or more responsible persons, whom the sheriff or other officer shall swear truly to assess the value thereof.

SEC. 188. [**Same—When given.**].—If the undertaking, required by section one hundred and eighty-six, be not given within twenty-four hours from the taking of the property under said order, the sheriff or other officer shall return the property to the defendant. And if the sheriff or other officer deliver any property so taken to the plaintiff, his agent or attorney, or keep the same from the defendant, without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

SEC. 189. [**Same—Objections to sureties.**].—The defendant may, within twenty-four hours from the time the undertaking referred to in the preceding section is given by the plaintiff, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he must be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify upon notice as bail on arrest. The sheriff or other officer shall be responsible for the sufficiency of the sureties, until the objection to them is waived as above provided or until they justify. The property shall be delivered to the plaintiff, when the undertaking, required by section one hundred and eighty-six has been given.

SEC. 190. [**Proceedings in action—Jury—Findings.**].—If the property has been delivered to the plaintiff, and judgment be rendered against him on de-

SEC. 185. The failure to serve the copy is not jurisdictional. 6 Neb. 472. 8 Neb. 113. A party cannot object to defects in undertaking or affidavit by a special appearance. 8 Neb. 112.

SEC. 188. The words in italics were not contained in the original section. An undertaking which omits the italicized words but contains all the other requirements is good as far as it goes. 8 Neb. 468.

SEC. 190. The plaintiff cannot, after trial has commenced, dismiss his case without prejudice. 9 Neb. 489. On appearance of defendant and dismissal of action for want of jurisdiction, he cannot afterwards be heard in that action as to his right to property replevied, or on question of damages. 10 Neb. 573.

murrer, or if he otherwise fail to prosecute his action to final judgment, the court shall, on application of the defendant or his attorney, impanel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied that said property was the property of the defendant at the commencement of the action, or if they shall find that the defendant was entitled to the possession only of the same at such time, then, and in either case, they shall assess such damages for the defendant as are right and proper; for which, with costs of suit, the court shall render judgment for the defendant.

SEC. 191. [Same.]—In all cases, when the property has been delivered to the plaintiff, where the jury shall find upon issue joined, for the defendant, they shall also find whether the defendant had the right of property or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages as they think right and proper for the defendant; for which, with costs of suit, the court shall render judgment for the defendant.

SEC. 191 a. [Return of property.]—SEC. 7. The judgment in the cases mentioned in sections one hundred and ninety, and one hundred and ninety-one, and in section one thousand and forty-one of said code, shall be for a return of the property or the value thereof in case a return cannot be had, or the value of the possession of the same, and for damages for withholding said property, and costs of suit. [Took effect Sept. 1, 1878. G. S. 718.]

SEC. 192. [Same—Damages.]—In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on an issue joined, or on inquiry of damages upon a judgment by default, they shall assess adequate damages to the plaintiff for the illegal detention of the property; for which, with costs of suit, the court shall render judgment for defendant.

SEC. 193. [Same—Property not returned.]—When the property claimed has not been taken, or has been returned to the defendant by the sheriff for want of the undertaking required by section one hundred and eighty-six, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by section one hundred and eighty-six, the plaintiff shall pay all costs made by taking the same.

SEC. 193 a. [Judgment for defendant on dismissal.]—That whenever any action in replevin shall be dismissed by the court for irregularities or defects

SEC. 191. Cited 1 Neb. 209. See note to section 181. Damages assessed whether defendant pleads a general denial, new matter as a defense or a demand for damages. 5 Neb. 38, 102. If verdict is silent on amount of damages, judgment cannot be rendered for any amount whatever, although verdict may find value of property. 6 Neb. 225. 9 Neb. 29. If defendant lawfully held property by virtue of a levy for taxes, the measure of damages, within the value of the property, is the amount of taxes, costs, etc. 6 Neb. 226. Jury may be waived and damages assessed by court. 6 Neb. 472. Verdict held good though technically defective. 6 Neb. 412. Replevin, judgment and damages depending on particular state of facts—stated. 7 Neb. 194, 10 Neb. 224. As element of damages jury may consider the decrease in value of the property from the time of the replevin with interest on entire value. 7 Neb. 236. But if property cannot be returned, as provided by next section, defendant is entitled to its value with interest to date of trial. 7 Neb. 295. Verdict ought to pass on question of unlawful detention, but if it do not in a case where that question is controlled entirely by ownership, which is expressly covered by the findings, the judgment will not be reversed on that ground. 9 Neb. 181. Where jury find right of possession in plaintiff, with damages for detention, judgment thereon is good, although specific questions were submitted to jury to some of which no answers were returned, no complaint being made until after jury is discharged. 6 Neb. 416. Instructions to jury. 9 Neb. 31.

SEC. 191 a. Though a judgment for a return of the property which fails to give at least nominal damages is for that reason defective, still if it conformed in this respect to the finding of fact which is not questioned by motion for new trial, judgment will not be reversed. 7 Neb. 201. The provisions of this section are mandatory. 7 Neb. 236. If property cannot be returned defendant entitled to its value and interest. 7 Neb. 295. Sureties on the undertaking may object to the form of the judgment and have same rendered in conformity to the statute. Failing to do so they are concluded by it. 8 Neb. 215. If the jury find the right of possession in the defendant, they must also find the value of the possession and damages. Failing to do so no judgment for damages, or value of possession in case property is not returned, can be rendered. 9 Neb. 29. Whether the provisions for a return of the property is not alone for the benefit of the defendant, *quere*. 10 Neb. 275. But before plaintiff can complain of such omission from the judgment he must show property capable of being returned. *Id*. Defendant obtaining alternative judgment, cannot after refusal to receive the property have execution for damages. 10 Neb. 594. This section is section 7 of "An act to amend the code of civil procedure." G. S. 713.

SEC. 192. Cited 1 Neb. 209.

SEC. 193. Cited 1 Neb. 318.

SEC. 193 a. "An act to amend the code of civil procedure in actions of replevin." 1875, 44. Took effect Feb. 25, 1875. Cited 9 Neb. 220



in the proceedings by the plaintiff, judgment may be given in favor of the defendant on proof of the value of the property and amount of damages. [1875, 44.]

SEC. 194. [**Order to several counties.**]—An order may be directed to any other county than the one in which the action is brought, for the delivery of the property claimed. Several orders may issue at the same time, or successively, at the option of the plaintiff; but only one of them shall be taxed in the costs, unless otherwise ordered by the court.

SEC. 195. [**Order—Execution—Power of sheriff.**]—The sheriff or other officer in the execution of the order of delivery, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or enclosure and the delivery of the property, after having demanded the same.

SEC. 196. [**Suit on undertaking.**]—No suit shall be instituted on the undertaking given under section one hundred and eighty-six, before an execution issued on a judgment in favor of the defendant in the action shall have been returned, that sufficient property whereon to levy and make the amount of such judgment cannot be found in the county.

SEC. 197. [**Liability of clerk and plaintiff.**]—Any order for the delivery of property issued under section one-hundred and eighty-two, without the affidavit required thereby, shall be set aside at the cost of the clerk issuing the same, and such clerk, as well as the plaintiff, shall also be liable in damages to the party injured.

#### CHAPTER III.—ATTACHMENT.

SEC. 198. [**When allowed—Grounds.**]—The plaintiff in a civil action for the recovery of money, may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated: *First.* When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this state; or, *Second.* Has absconded with the intent to defraud his creditors; or, *Third.* Has left the county of his residence to avoid the service of a summons; or, *Fourth.* So conceals himself that a summons cannot be served upon him; or, *Fifth.* Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or, *Sixth.* Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or, *Seventh.* Has property, or rights in action, which he conceals; or, *Eighth.* Has assigned, removed, or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors; or, *Ninth.* Fraudulently contracted the debt or incurred the obligation for which suit is about to be or has been brought. But an attachment shall not be granted on the ground that the defendant is a foreign corporation, or a non-resident of the state, for any claim other than a debt or demand arising upon contract, judgment, or decree.

SEC. 199. [**Affidavit.**]—An order of attachment shall be made by the clerk of the court in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office an affidavit of the plaintiff, his agent, or attorney, showing: *First.* The nature of the plaintiff's claim. *Second.* That

SEC. 196. On appeal, if judgment is rendered against appellant, it may also be against sureties on appeal bond. But this rule does not apply to the undertaking mentioned in section 186. 9 Neb. 46.

SEC. 198. An attachment cannot be maintained in an action of tort. 4 Neb. 61. Officers issuing an attachment and executing it are not liable for conversion if acting in good faith. 1 Neb. 363. Property held under a valid assignment for benefit of creditors is not liable to attachment. 7 Neb. 281. An attaching creditor cannot maintain an action to have an alleged fraudulent conveyance from his debtor set aside. 3 Neb. 386. 9 Neb. 482. Attachment of notes and mortgage. 6 Neb. 343. 7 Neb. 303. Attachment dissolved by bankruptcy proceedings. 10 Neb. 44.

SEC. 199. Affidavit sufficient if it be in the language of the statute. 2 Neb. 14. 3 Neb. 73. 9 Neb. 409. But if denied burden of proof rests on plaintiff. Id. Defects in affidavit cannot be questioned in a collateral proceeding. 2 Neb. 153. A writ which does not run in the name of "The People of the State of Nebraska" (Const. 1867. "The State of Nebraska" Const. 1875) is voidable only. Defect curable by amendment. 4 Neb. 381. A petition headed "Supreme Court of New York" and filed in a district court of Nebraska is not sufficiently defective to warrant the dissolution of an attachment issued in the cause. Id. Affidavit may be amended. 5 Neb. 493. And is good if signed by affiant at end though his name is omitted from body of affidavit. 6 Neb. 165. Want of venue is fatal unless cured by amendment, but to be made available the motion to dissolve must be made before final judgment. Id.

it is just. *Third.* The amount which the affiant believes the plaintiff ought to recover. *Fourth.* The existence of some one of the grounds for an attachment enumerated in the preceding section.

**SEC. 200. [Undertaking.]**—When the ground of the attachment is, that the defendant is a foreign corporation, or a non-resident of the state, the order of attachment may be issued without an undertaking. In all other cases, the order of attachment shall not be issued by the clerk until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the clerk an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

**SEC. 201. [Order—Requirements.]**—The order of attachment shall be directed and delivered to the sheriff. It shall require him to attach the lands, tenements, goods, chattels, stocks, or interests in stocks, rights, credits, moneys, and effects of the defendant in his county not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

**SEC. 202. [Same—To several counties.]**—Orders of attachment may be issued to the sheriff of different counties; and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but such only as have been executed shall be taxed in the costs, unless otherwise directed by the court.

**SEC. 203. [Same—Returnable.]**—The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it is issued.

#### EXECUTION AND RETURN.

**SEC. 204. [Several orders, how executed.]**—When there are several orders of attachment against the same defendant, they shall be executed in the order in which they are received by the sheriff.

**SEC. 205. [Duty of sheriff—Appraisement.]**—The order of attachment shall be executed by the sheriff without delay. He shall go to the place where the defendant's property may be found, and there in the presence of two residents of the county, declare that by virtue of said order he attaches said property at the suit of such plaintiff; and the officer, with the said residents, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and residents, and returned with the order. Where the property attached is real property, the officer shall leave with the occupant thereof, or, if there be no occupant, in a conspicuous place thereon, a copy of the order. Where it is personal property, and accessible, he shall take the same into his custody, and hold it subject to the order of the court.

**SEC. 206. [Same—Bond.]**—The sheriff shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the sheriff, of an undertaking to the plaintiff, with one or more sufficient sureties, resident in the county, to the effect that the parties to the same are bound in double the appraised value thereof, that the property or its appraised value in money shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person so bound.

SEC. 200. Liability of sureties on attachment bond. 1 Neb. 128. In an action on undertaking petition should allege that attachment was wrongfully sued out. It is not enough to state that it was quashed and the property released by proceedings in error. 5 Neb. 471. This section is not unconstitutional. 9 Neb. 100, 235.

SEC. 203. Cited 4 Neb. 382.

SEC. 206. If attachment is dissolved, defendant is entitled to possession of property, without re-imbursing sheriff for expenses in taking care of it, etc. 1 Neb. 130. The giving of the undertaking does not operate as a dissolution of attachment or prevent defendant from moving its dissolution. 9 Neb. 410.

**SEC. 207. [Proceedings against garnishee.]**—When the plaintiff, his agent or attorney, shall make oath, in writing, that he has good reason to and does believe that any person or corporation, to be named and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice that he appear in court, at the return of the order of attachment, and answer, as provided in section two hundred and twenty-one.

**SEC. 208. [Same—Service of order.]**—The copy of the order and the notice shall be served upon the garnishee as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other officer of the same, or a managing agent thereof.

**SEC. 209. [Several attachments—Same property.]**—Different attachments of the same property may be made by the same officer, and one inventory and appraisalment shall be sufficient, and it shall not be necessary to return the same with more than one order.

**SEC. 210. [Property how attached by subsequent orders.]**—Where the property is under attachment, it shall be attached under subsequent orders as follows: *First.* If it be real property, it shall be attached in the manner prescribed in section two hundred and five. *Second.* If it be personal property, it shall be attached as in the hands of the officer, and subject to any previous attachment. *Third.* If the same person or corporation be made a garnishee, a copy of the order and notice shall be left with him, in the manner prescribed in section two hundred and seven.

**SEC. 211. [Return of officer.]**—The officer shall return upon every order of attachment what he has done under it. The return must show the property attached, and time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return with the order all undertakings given under it.

**SEC. 212. [Property and garnishee bound by order.]**—An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys, and credits in his hands, or due from him to the defendant, from the time he is served with the written notice mentioned in section two hundred and seven; but where the property is attached in the hands of a consignee, his lien thereon shall not be affected by the attachment.

#### DISPOSITION OF ATTACHED PROPERTY.

**SEC. 213. [Receiver—Appointment.]**—The court, or any judge thereof during vacation, may, on the application of the plaintiff, and on good cause shown, appoint a receiver, who shall take an oath faithfully to discharge his duty, and shall give an undertaking to the State of Nebraska, in such sum as the court or judge may direct, and with such security as shall be approved by the clerk of the court, for the faithful performance of his duty as such receiver, and to pay over all money, and account for all property, which may come into his hands by virtue of his appointment, at such times and in such manner as the court may direct.

**SEC. 214. [Same—Take possession of property.]**—Such receiver shall take possession of all notes, due bills, books of account, accounts, and all other evidences of debt, that have been taken by the sheriff or other officer, as the property of the defendant in attachment, and shall proceed to settle and collect the same. For that purpose, he may commence and maintain actions in his own

SEC. 207. Municipal corporations not liable to process of garnishment. 2 Neb. 167.

SEC. 211. Return should show proceedings under sec. 206. 9 Neb. 410.

SEC. 212. The property is in the custody of the law for the satisfaction of the claims for which it was seized, until voluntarily relinquished or lawfully discharged. 6 Neb. 186.

name as such receiver; but in such action no right of defense shall be impaired or affected.

**SEC. 215. [Same—Notice to debtors.]**—Such receiver shall forthwith give notice of his appointment to the persons indebted to the defendant in attachment. The notice shall be written or printed, and shall be served on the debtor or debtors, by copy personally, or by copy left at the residence; and from the date of such service, the debtors shall stand liable to the plaintiff in attachment for the amount of moneys and credits in their hands, or due from them to the defendant in attachment, and shall account therefor to the receiver.

**SEC. 216. [Same—Report.]**—Such receiver shall, when required, report his proceedings to the court, and hold all moneys collected by him, and property which may come into his hands, subject to the order of the court.

**SEC. 217. [Sheriff—Act as receiver.]**—Where a receiver is not appointed by the court or a judge thereof, as provided in section two hundred and thirteen, the sheriff or other officer attaching the property shall have all the powers and perform all the duties of a receiver appointed by the court or a judge, and may, if necessary, commence and maintain actions in his own name as such officer. He may be required to give security, other than his official undertaking.

**SEC. 218. [Preservation of property—Sale.]**—The court shall make proper orders for the preservation of the property during the pendency of the suit. It may direct the sale of property when, because of its perishable nature, or the costs of keeping it, a sale will be for the benefit of the parties. In vacation, such sale may be ordered by the judge of the court. The sale shall be public, after such advertisement as is prescribed for the sale of like property on execution, and shall be made in such manner, and upon such terms of credit, with security, as the court or judge, having regard to the probable duration of the action, may direct. The proceeds, if collected by the sheriff, with all the moneys received by him from garnishees, shall be held and paid over by him, under the same requirements and responsibilities of himself and sureties as are provided in respect to money deposited in lieu of bail.

#### PROCEEDINGS UPON ATTACHMENT.

**SEC. 219. [Attachment—Discharge—Bond.]**—If the defendant, or any other person on his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the court, in double the amount of the plaintiff's claim as stated in his affidavit, to the effect that the defendant shall perform the judgment of the court, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof. Such undertaking shall also discharge the liability of a garnishee in such action for any property of the defendant in his hands.

**SEC. 220. [Same—Undertaking.]**—The undertaking mentioned in the last section, may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect as if executed in court; the sureties in either case to be approved by the officer before whom the undertaking is executed.

**SEC. 221. [Garnishee—Appearance—Answer—Fees.]**—The garnishee shall appear as follows: If the order of attachment be returned during a term of court, he shall appear at that term; if the order be returned during vacation, he shall appear at the term next after its return. He shall appear and answer under oath all the questions put to him touching the property of every description and credits of the defendant in his possession or under his control, and he shall disclose truly the amount owing by him to the defendant whether due or not, and in case of a corporation, any stock therein held by or for the benefit of the de-

Sec. 219. Cited 9 Neb. 408.

Sec. 221. The amendment added the last clause. Municipal corporation cannot be garnisheed 2 Neb. 168.

fendant, at or after the service of notice. But a garnishee shall not be required to appear in this or in any other case, unless there is tendered to him the same fees as a witness is entitled to in the suit in which the garnishee proceedings are had, and such fees may be taxed and collected in the same manner as other costs in such proceedings. [Amended 1877, 10. Took effect June 1, 1877.]

SEC. 222. [**Same—Payment of money to sheriff.**—A garnishee may pay the money owing to the defendant by him, to the sheriff having the order of attachment, or into court. He shall be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

SEC. 223. [**Same—Refusal to answer—Contempt.**—If the garnishee do not appear in court and answer, as required by section two hundred and twenty-one, the court may proceed against him by attachment as for a contempt.

SEC. 224. [**Same—Disposition of property.**—If the garnishee appear and answer, and it is discovered on his examination, that at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property and the payment of the amount owing by the garnishee, into the court; or the court may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff by one or more sufficient sureties, to the effect that the amount shall be paid, or the property forthcoming, as the court may direct.

SEC. 225. [**Same—Neglect—Action against.**—If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the court, or deliver the property and pay the money owing into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, by filing a petition in his own name, as in other cases, and causing a summons to be issued upon it; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiff in attachment are satisfied, the defendant in attachment may, on motion, be substituted as the plaintiff in the judgment.

SEC. 226. [**Same—Final judgment—Discharge.**—Final judgment shall not be rendered against the garnishee, until the action against the defendant in attachment has been determined; and if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all the property, moneys, and credits of the defendant in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

SEC. 227. [**Judgment for defendant—Attachment discharged.**—If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached, or its proceeds, shall be returned to him.

SEC. 228. [**Judgment for plaintiff—Satisfaction.**—If judgment be

SEC. 228. All questions which may be raised upon the proceedings of the sheriff in executing the order,

rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, and so much of the personal property, and lands and tenements, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the court, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon, for the residue, in all respects, as in other cases. Any surplus of the attached property, or its proceeds, shall be returned to the defendant.

SEC. 229. [**Delivery of property for sale.**].—The court may compel the delivery to the sheriff, for sale, of any of the attached property for which an undertaking may have been given, and may proceed summarily on such undertaking, to enforce the delivery of the property, or the payment of such sum as may be due upon the undertaking, by rules and attachments, as in cases of contempt.

SEC. 230. [**Same.**].—The court may order the sheriff to repossess himself, for the purpose of selling it, of any of the attached property which may have passed out of his hands without having been sold or converted into money; and the sheriff shall, under such order, have the same power to take the property as he would have under an order of attachment.

SEC. 231. [**Intervening claimants.**].—If personal property which has been attached, be claimed by any person other than the defendant, it shall be the duty of the officer to have the validity of such claim tried, and such proceedings must be had thereon, with the like effect, as in case the property had been seized upon execution, and claimed by a third person.

SEC. 232. [**Several attachments—Reference.**].—Where several attachments are executed on the same property, or the same persons are made garnishees, the court, on the motion of any of the plaintiffs, may order a reference to ascertain and report the amounts and priorities of the several attachments.

#### GENERAL PROVISIONS.

SEC. 233. [**Jurisdiction of court—Survivor.**].—From the time of the issuing of the order of attachment, the court shall be deemed to have acquired jurisdiction, and to have control of all subsequent proceedings under this chapter; and if, after the issuing of the order, the defendant, being a person, should die, or a corporation and its charter should expire by limitation, forfeiture, or otherwise, the proceeding shall be carried on; but in all such cases other than where the defendant was a foreign corporation, his legal representatives shall be made parties to the action.

SEC. 234. [**Additional security.**].—The defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's undertaking has removed from this state, or is not sufficient for the amount thereof, it may vacate the order of attachment, and direct restitution of any property taken under it, unless in a reasonable time, to be fixed by the court, sufficient security is given by the plaintiff.

SEC. 235. [**Motion to discharge attachment.**].—The defendant may, at any time before judgment, upon reasonable notice to the plaintiff, move to discharge an attachment, as to the whole or a part of the property attached.

of sale are concluded by the confirmation, and cannot be opened in a collateral action. 1 Neb. 320. 2 Neb. 156.

SEC. 229. See 9 Neb. 416, and note to sec. 206.

SEC. 234. By provisions of "An act to amend the code of civil procedure in attachment cases," approved Feb. 25, 1875, Laws p. 44, the provisions of secs. 234, 235 and 236, shall apply to county courts and justices of the peace.

SEC. 235. Motion cannot be entertained after final judgment. 6 Neb. 165. 9 Neb. 411. Rights of subsequent attaching creditor. 6 Neb. 165. Merits of demand cannot be inquired into on hearing of motion. 9 Neb. 236.

**SEC. 236. [Same—Evidence—Affidavits.]**—If the motion be made upon affidavits on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of attachment was made.

**SEC. 236 a. [Attachment in several counties—Copy to be filed.]**—**SEC. 1.** That whenever an attachment shall issue to any other county than the one in which the action is brought, and any lands shall be attached by virtue thereof, it shall be the duty of the officers attaching said property to make out a true copy of said order of attachment, and file the same in the office of the recorder of deeds of the county where the lands so attached are situated. He shall also certify upon said copy of said order of attachment, that the same is a true copy of the original writ received by him, and he shall also endorse thereon the description of the property attached, and the time when the same was attached under and by virtue of the original order of attachment. [G. S. 714.]

**SEC. 236 b [Same—Record.]—SEC. 2.** It shall be the duty of the recorder of deeds of the county, when the copy of the order of attachment has been filed as provided in this act, to record the same in the miscellaneous record together with the certificate of the officers heretofore mentioned, and such copy of said orders of attachment, and certificate so filed and recorded, shall be sufficient notice to subsequent purchasers of said land so attached as aforesaid.

**SEC. 236 c. [Same—Discharge—Proceedings.]—SEC. 3.** If the order of attachment be discharged it shall be the duty of the clerk of the court in which the action is brought, to certify that fact, together with the time when the order was discharged to the recorder of deeds in whose office the copy of said order has been recorded as aforesaid; whereupon such recorder shall file such certificate, and write across the record of such copy the word "discharged," and also the time of discharge, as shown in said certificate.

**SEC. 236 d. [Same—Fees.]—SEC. 4.** The officer for making out said copy of the order of attachment, and the clerk for recording the same, shall each receive such compensation as is now allowed by law for similar services to be taxed in the costs, unless otherwise ordered by the court.

**SEC. 236 e. [Retention of property pending review on error.]—SEC. 1.** That when an order discharging an order of attachment is made, and any party affected thereby shall except thereto, the court or judge shall fix the number of days, not to exceed twenty, in which such party may file his petition in error, during which time the property attached shall be held by the sheriff or other officer, during which period the petition in error shall be filed, and the party filing the same shall give an undertaking to the adverse party, with surety or sureties, to be approved by the court, in double the amount of the appraised value of the property attached, conditioned to pay said adverse party all damages sustained by such party in consequence of the filing of said petition in error, in the event that such order of attachment shall be discharged by the court, in which said petition in error shall be filed, as having been unlawfully obtained. [G. S. 715.]

**SEC. 236 f. [Same—Conduct of original action.]—SEC. 2.** The original action shall proceed to trial and judgment in every other respect as though no writ of error had been prosecuted.

#### ATTACHMENTS IN CERTAIN ACTIONS.

**SEC. 287. [Claim not due.]**—A creditor may bring an action on a claim before it is due, and have an attachment against the property of the debtor,

SEC. 236 a-d. "An act requiring copies of attachments to be filed in certain cases," approved and took effect Feb. 8, 1873. Gen. Stat. 714.

SEC. 236 e, f. "An act to provide for the retention of attached property pending a review on error of an order discharging the attachment." Approved and took effect Feb. 18, 1873. Gen. Stat. 715. If the undertaking is not given within the required time, the officer must deliver the property to party entitled thereto. 9 Neb. 148. The undertaking not being a part of the record its absence therefrom in the supreme court cannot be taken as proof that it was not in fact given. 9 Neb. 408.

SEC. 237. It is only in these exceptional cases that an action can be maintained on a claim before it is due. 9 Neb. 297.

in the following cases: *First.* Where a debtor has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts. *Second.* Where he is about to make such sale, conveyance, or disposition of his property, with such fraudulent intent. *Third.* Where he is about to remove his property, or a material part thereof, with the intent or to the effect of cheating or defrauding his creditors, or of hindering and delaying them in the collection of their debts.

SEC. 238. [**How granted.**].—The attachment authorized by the last section may be granted by the court in which the action is brought, or by a judge thereof, or by the probate judge of the county; but before such action shall be brought, or such attachment shall be granted, the plaintiff, his agent, or attorney, shall make an oath, in writing, showing the nature and amount of the plaintiff's claim, that it is just, when the same shall become due, and the existence of some one of the grounds for attachment enumerated in the preceding section.

SEC. 239. [**Refusal to grant order.**].—If the court or judge refuse to grant an order of attachment, the action shall be dismissed, but without prejudice to a future action; and in all such actions application for an attachment must be made.

SEC. 240. [**Order—Contents.**].—The order of the court or judge granting the attachment shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable costs of the action.

SEC. 241. [**Undertaking.**].—The order of attachment as granted by the court or judge, shall not be issued by the clerk until there has been executed in his office such undertaking on the part of the plaintiff as is directed by section two hundred.

SEC. 242. [**Judgment.**].—The plaintiff in such action shall not have judgment on his claim before it becomes due, and the proceedings on attachment may be conducted without delay.

SEC. 243. [**Proceedings, how conducted.**].—The proceedings in the first article of this chapter subsequent to section two hundred, shall, so far as they are applicable, regulate the attachments authorized by this chapter.

#### GARNISHMENT IN CERTAIN CASES.

SEC. 244. [**In aid of execution.**].—In all cases where an execution issued upon any judgment of a court of record, or of a justice of the peace, shall be returned by the officer in whose hands the same was placed for service, unsatisfied for want of sufficient property whereof to levy and collect the same, and the judgment creditor in such execution, his agent or attorney, shall file an affidavit in the office of the clerk of the court, or justice of the peace, from which said execution issued, that he has good reason to and does believe that any person or corporation (naming them) have property of and are indebted to the judgment debtor, the said clerk, or justice of the peace, shall issue a summons as in other cases, requiring such person or corporation to appear in court and answer such interrogatories as shall be propounded to him, it or them, touching the goods, chattels, rights and credits of the said judgment debtor in his, its or their possession or control.

SEC. 245. [**Same—Liability of garnishee.**].—The summons shall be made returnable, and the said persons or corporations shall be required to appear, as in ordinary cases of summons, and thereafter like proceedings shall be had therein, and said garnishees shall be held liable, in all respects, as in cases of garnishees before judgment.

SEC. 238. The affidavit should set forth facts such as disclose the fraudulent intent, etc. 6 Neb. 527. The issuance of the writ is a matter of discretion, but if by the abuse of that discretion a party is injured the decision may be reviewed on error. In such case the record must show facts which will indicate the intent of the debtor. *Id.*

SEC. 244. If judgment is set aside, garnishee is discharged. 6 Neb. 347. Return of sheriff that he "cannot find any chattel property belonging to within named defendants whereon to levy this writ," is sufficient to authorize proceedings under this section. 8 Neb. 41. If garnishee takes no appeal from order requiring him to pay money into court such order is conclusive and cannot be reviewed in an action by an assignee of the judgment creditor against such garnishee. *Id.*



**SEC. 246. [Same—Proceedings.]**—The summons shall be served as a summons in an original action is served; the said persons or corporations so summoned shall be liable to the judgment creditor in said execution for all property, moneys and credits in his, its or their hands, or due from him, it or them to the judgment debtor in said execution, at the time of, and which may come into his, its or their hands or control, after the service of said summons.

**SEC. 247. [Irregularities not fatal.]**—No proceedings against such garnishee or garnishees shall be quashed, or such garnishee or garnishees discharged, by reason of any informality or irregularity, merely, of the affidavit, or summons provided for in this article.

**SEC. 248. [Disposition of property.]**—In cases where the garnishee, in answering such interrogatories, shall disclose that he has property in his possession, or under his control, belonging to the defendant or defendants in execution, the court shall order the same to be taken and sold by the officers upon execution, as in other cases.

**SEC. 249. [Payment of money.]**—In cases where the garnishee, in answering such interrogatories, shall disclose that he is indebted to the defendant in execution the court shall order the garnishee to pay over the amount found to be due from the said garnishee to the defendant in execution, which amount shall be collected by execution, as in other cases, as near as may be, and such amount, when paid or collected, shall be credited on the original judgment, and the garnishee shall be credited for the amount so paid or collected.

#### CHAPTER IV.—INJUNCTION.

**SEC. 250. [Defined.]**—The injunction provided by this code, is a command to refrain from a particular act. It may be the final judgment in an action, or may be allowed as a provisional remedy; and when so allowed it shall be by order. The writ of injunction is abolished.

**SEC. 251. [Causes for allowance.]**—When it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. It may also be granted in any case where it is specially authorized by statute.

**SEC. 252. [By whom and when granted.]**—The injunction may be granted at the time of commencing the action, or at any time afterward, before judgment, by the supreme court or any judge thereof, the district court or any judge thereof, or, in the absence from the county of said judges, by the probate judge thereof,

**SEC. 249.** The order is final and may be reviewed on error. 7 Neb. 282. But cannot be attacked collaterally. 8 Neb. 42.

**SEC. 251.** To abate a public nuisance, the plaintiff must show special injury to himself. 3 Neb. 185. The erection of a toll gate across a public road, if a nuisance, is one common and public, and not resulting in any special injury to one person. *Id.* The injunction will lie to abate a private nuisance created by means of a ditch which discharges surface water on land of plaintiff. 8 Neb. 43. Where a conveyance would pass no title, but would result in casting a cloud on plaintiff's title, the sale will be restrained. 4 Neb. 150. 5 Neb. 161. Where on default in payment a mortgagee took possession of chattel property, upon which the owner of a judgment against him made a levy; *held*, that an injunction would not lie at the instance of mortgagee, restraining the sale. 4 Neb. 373. An injunction will lie to restrain the collection of an erroneous and illegal tax. 4 Neb. 149. 7 Neb. 366. But if a portion of the tax is legal and a portion illegal, if the legal can be separated from the illegal an injunction will not lie against the entire tax. 2 Neb. 426. 7 Neb. 495. Plaintiff must have paid or offered to pay all legal taxes. 10 Neb. 65, 119, 165, 199. And see chapter 77, ante p. 400, note to sec. 77. Also see 5 Neb. 401. 8 Neb. 331. Tax payers may enjoin county commissioners from an illegal exercise of their powers. 8 Neb. 21. As to petition to enjoin judgment. 9 Neb. 172, 324. Also 4 Neb. 108. 5 Neb. 472. 6 Neb. 178. A purchaser at judicial sale will not be enjoined from receiving deed at the instance of one having no interest until after the sale, on the ground that the judgment was void because the record failed to show service on defendants. 10 Neb. 415. And see generally 6 Neb. 18, 193, 204, 401, 499. 9 Neb. 82, 169, 324.

**SEC. 252.** The district judge can grant the injunction at any time in his own district, and in another district only when the office of judge therein is vacant or the judge unable to act. 7 Neb. 387.

upon it appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or his agent, that the plaintiff is entitled thereto.

SEC. 253. [**Preliminary hearing.**—If the court or judge deem it proper that the defendant, or any party to the suit, should be heard before granting the injunction, it may direct a reasonable notice to be given to such party to attend for such purpose at a specified time and place, and may, in the meantime, restrain such party.

SEC. 254. [**Notice.**—An injunction shall not be granted against a party who has answered, unless upon notice; but such party may be restrained, until the decision of the application for an injunction.

SEC. 255. [**Bond.**—No injunction, unless provided by special statute, shall operate, until the party obtaining the same shall give an undertaking, executed by one or more sufficient sureties, to be approved by the clerk of the court granting such injunction, in an amount to be fixed by the court or judge allowing the same, to secure to the party enjoined the damages he may sustain, if it be finally decided that the injunction ought not to have been granted.

SEC. 256. [**Order—Contents.**—The order of injunction shall be addressed to the party enjoined, shall state the injunction, and shall be issued by the clerk. Where the injunction is allowed at the commencement of the action, the clerk shall endorse upon the summons, "injunction allowed," and it shall not be necessary to issue the order of injunction; nor shall it be necessary to issue the same, where notice of the application therefor has been given to the party enjoined. The service of the summons so endorsed, or the notice of the application for an injunction, shall be notice of its allowance.

SEC. 257. [**Order—Service.**—Where the injunction is allowed during the litigation, and without notice of the application therefor, the order of injunction shall be issued, and the sheriff forthwith serve the same upon each party enjoined, in the manner prescribed for serving a summons, and make return thereof, without delay.

SEC. 258. [**Takes effect, when.**—An injunction binds the party, from the time he has notice thereof, and the undertaking required by the applicant therefor is executed.

SEC. 259. [**Several applications.**—No injunction shall be granted by a judge, after a motion therefor has been overruled on the merits of the application, by his court; and where it has been refused by the court in which the action is brought, or a judge thereof, it shall not be granted to the same applicant by a court of inferior jurisdiction or any judge thereof.

SEC. 260. [**Enforcement—Breach.**—An injunction granted by a judge may be enforced as the act of the court. Disobedience of an injunction may be punished as a contempt by the court, or by any judge who might have granted it in vacation. An attachment may be issued by the court or judge, upon being satisfied by affidavit of the breach of the injunction, against the party guilty of the same; and he may be required, in the discretion of the court or judge, to pay a fine not exceeding two hundred dollars, for the use of the county, to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirement, or be otherwise legally discharged.

SEC. 261. [**Additional security.**—A party enjoined may, at any time before judgment, upon reasonable notice to the party who has obtained the injunction, move the court for additional security; and if it appear that the surety in the undertaking has removed from the state, or is insufficient, the court may vacate the injunction, unless in a reasonable time sufficient security be given.

SEC. 262. [**Affidavits on hearing.**—On the hearing of an application for an injunction, each party may read affidavits. All affidavits shall be filed.

SEC. 263. [**Motion to vacate—Order recorded.**—If the injunction be

granted without notice, the defendant, at any time before the trial, may apply, upon notice, to the court in which the action is brought, or any judge thereof, to vacate or modify the same. The application may be made upon the petition and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge allowing, dissolving or modifying an injunction, shall be returned to the office of the clerk of the court in which the action is brought, and recorded and obeyed, as if made by the court.

SEC. 264. [**Same—Affidavits—Evidence.**]—If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the injunction was granted.

SEC. 265. [**Injunction on counter-claim.**]—A defendant may obtain an injunction upon an answer in the nature of a counter-claim. He shall proceed in the manner prescribed in this chapter.

#### CHAPTER V.—RECEIVERS.

SEC. 266. [**Causes for appointment.**]—A receiver may be appointed by the supreme court, or the district court, or by the judge of either, in the following cases: *First.* In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of any party to the suit, when the property or fund is in danger of being lost, removed or materially injured. *Second.* In an action for the foreclosure of a mortgage, when the mortgaged property is in danger of being lost, removed or materially injured, or is probably insufficient to discharge the mortgage debt. *Third.* After judgment, or decree to carry the same into execution, or to dispose of the property according to the decree or judgment, or to preserve it during the pendency of an appeal. *Fourth.* In all cases provided for by special statutes. *Fifth.* In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

SEC. 267. [**Notice of application.**]—No receiver shall be appointed except in a suit actually commenced and pending, and after notice to all parties to be affected thereby, of the time and place of the application, the names of the proposed receiver and of his proposed sureties, and of the proposed sureties of the applicant. Such notice shall state upon what papers the application is based, and be served upon the adverse party, or his solicitor, at least five days before the proposed hearing, and one additional day for every thirty miles of travel from the place of serving the notice to the place where the application is to be made, by the usually traveled route, or shall be published in the same manner as notices of the pendency of suits to non-resident defendants.

SEC. 268. [**Sheriff to take possession of property.**]—Should the delay occasioned by the giving the notice provided for in the last preceding section be hazardous to the rights of any party, the court or judge may, by order, direct the sheriff of the county in which such action is pending, to take temporary possession of the property, and shall appoint an early day for the hearing of the application, and if at such hearing the application is refused, restitution shall be made of the property to the party from whom the same was taken.

SEC. 269. [**Bond.**]—Every order appointing a receiver shall require the applicant to give a bond conditioned to pay all damages which the other parties to the suit, or any of them, may sustain by reason of the appointment of a receiver in case it shall be finally decided that the order ought not to have been granted, and shall also require the receiver to give a bond conditioned to faithfully discharge his duties as receiver and obey all orders of the court. The said bonds

SEC. 263. An order dissolving a temporary injunction is not final. 1 Neb. 310. 8 Neb. 17.

SEC. 266. The appointment seems discretionary with the judge. No exception in cases mentioned in second subdivision is made in favor of the representatives of deceased mortgagors. 9 Neb. 382.

SEC. 269. The original section required the bond to be filed in the "county clerk's office."

shall each run to the defendant, and all adverse parties in interest and be for the use of any party to the suit, and be in a penal sum equal to double the value of the property in question, and be executed by two or more sureties to be approved by the court or judge making the appointment, and be filed in the office of the clerk of the district court; nor shall the same be considered executed until they are so filed. [Amended 1875, 86. Took effect Feb. 25, 1875.]

**Sec. 270. [Appointment—When.]**—If a plaintiff shall desire the appointment of a receiver at the commencement of the action, he shall pray such appointment in his petition. If the occasion for a receiver shall arise while the suit is pending, the application shall be made by a petition entitled in the cause, signed and verified by the applicant, and setting forth the facts and circumstances making such appointment necessary or proper.

**Sec. 271. [Objections to receiver or sureties.]**—Any party to the suit may, upon the hearing of the application, show, by affidavit or otherwise, objections to the proposed sureties, and to the proposed receiver, and what is the value of the property to be taken possession of, and that a receiver ought not to be appointed. He may also nominate a person to be receiver, giving at the same time the names of his proposed sureties. No person shall be appointed receiver who is party, solicitor, counsel, or in any manner interested in the suit.

**Sec. 272. [Order—Contents—Directions.]**—Every order appointing a receiver shall contain special directions in respect to its powers and duties, and upon application of any party to the suit, after due notice thereof, such further directions may be made in that behalf by the court or judge as may in the further progress of the cause become proper.

**Sec. 273. [How considered.]**—Every receiver shall be considered the receiver of any party to the suit, and no others.

**Sec. 274. [Appointment without notice void.]**—Every order appointing a receiver without the notice provided for herein, shall be void, and every such order heretofore made, under which the appointee has not possessed himself of the property in question, shall be suspended until an order shall have been made, and the bonds executed and filed in accordance with the provisions of this chapter.

**Sec. 275. [Decree—Reference—Appeal.]**—When a decree shall be rendered in a suit in which a receiver has been appointed, and such decree shall not finally determine the rights of the parties, any one of them may apply to the court for the possession of the property and proceeds thereof in the receiver's hands. If such application be resisted, the matter may be referred to a master, to take and report to the court the testimony of the parties. And on the coming in of said report, the court shall, by its order, award the possession of the property and the proceeds thereof to the party entitled thereto; and thereupon the receiver shall surrender the property and the proceeds thereof to such party. All orders appointing receivers, giving them further directions and disposing of the property, may be appealed to the supreme court in the same manner as final orders and decrees.

**Sec. 276. [Contempt—Further order.]**—Whenever in the exercise of their authority, the court or judge shall have ordered the deposit or delivery of money, or other things, and the order is disobeyed, the court or judge in addition to punishing such disobedience as for contempt may make an order requiring the sheriff to take the money or thing, and deposit or deliver it, in conformity with the direction of the court or judge. [Amended 1871, 112. Took effect March 4, 1871. G. S. 571.]

## TITLE IX.—PROCEEDINGS BEFORE THE COURT.

### CHAPTER I.—ISSUE.

**Sec. 277. [How formed.]**—Issues arise on the pleadings where a fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds: *First*. Of law. *Second*. Of fact.

**SEC. 278. [Of fact, how formed.]**—An issue of fact arises: *First*. Upon a material allegation in the petition, denied by the answer. *Second*. Upon a set-off or counter-claim presented in the answer and denied by the reply. *Third*. Upon material new matter in the answer or reply, which shall be considered as controverted by the opposite party without further pleading.

CHAPTER II.—TRIAL.

**SEC. 279. [Defined.]**—A trial is a judicial examination of the issues, whether of law or of fact, in an action.

**SEC. 280. [Issues, how tried.]**—Issues of law must be tried by the court, unless referred as provided in section two hundred and ninety-eight. Issues of fact arising in actions for the recovery of money, or of specific real or personal property, shall be tried by a jury, unless a jury trial is waived, or a reference be ordered as hereinafter provided.

**SEC. 281. [Same.]**—All other issues of fact shall be tried by the court, subject to its power to order any issue or issues to be tried by a jury, or referred as provided in this code.

**SEC. 281 a. [Actions, when triable.]**—SEC. 9. Actions shall be triable at the first term of the court, after the issues therein, by the times fixed for pleading, are, or should have been made up; and when, by the times fixed for pleading, the issues are, or should have been made up during a term, such action shall be triable at that term. When the issues are, or should have been, made up, either before or during a term of court, but after the period for preparing the trial docket of such term, the clerk shall place such actions on the trial docket of that term. [G. S. 718.]

TRIALS BY JURY.

**SEC. 282. [Formation of jury.]**—The general mode of summoning, impaneling, challenging, and swearing the jury, is not changed by this code. [R. S. 441. G. S. 572.]

**SEC. 283. [Order of proceedings.]**—When the jury has been sworn the trial shall proceed in the following order, unless the court for special reasons otherwise direct: *First*. The plaintiff must briefly state his claim, and may briefly

**SEC. 280.** Issues properly presented by the pleadings must be decided before judgment is entered. 8 Neb. 168.

**SEC. 281. a.** Being section 9 of "an act to amend the code of civil procedure," taking effect Sept. 1, 1873. Gen. Stat. 713.

**SEC. 283.** Court may refuse instructions requested if the substance has already been given. 1 Neb. 120. Jury may return into court for further instructions. 1 Neb. 207. Where there is no evidence it is not error to charge jury that a fact is unproved. 10 Neb. 523. But it is error to direct jury how they shall find, if facts are in dispute. 6 Neb. 89. And if there is any evidence by which a finding in favor of him on whom rests the burden of proof can be upheld, the court should not direct a verdict against him. 8 Neb. 209; and the converse of this is also true. *Id.* The assumption by the court that there is evidence by which jury may find a particular fact, when there is no such evidence, and instructions which tend to mislead the jury are good grounds for new trial. 1 Neb. 319, 358. 2 Neb. 338. 4 Neb. 555. 5 Neb. 216. 6 Neb. 159, 434. 8 Neb. 90, 159, 272, 431. 10 Neb. 292. An instruction abstractly correct but not based on evidence, may be rejected. 6 Neb. 418, 498. 8 Neb. 277. But if an erroneous charge be given on an abstract proposition of law, and verdict is supported by proof the judgment will not be disturbed. 1 Neb. 319. 2 Neb. 297. A request to instruct which states the law correctly in any possible view of the case ought not to be refused. 6 Neb. 320. But if it contain several propositions so confused and indefinite, as to some of them, as to convey no clear idea of what is intended, the whole may be properly rejected. *Id.* And a request to charge that there is no proof of a certain matter, when there is some, though very slight, should be refused. 6 Neb. 436. 8 Neb. 432. If jury disregard instructions or testimony verdict should be set aside. 2 Neb. 342. 9 Neb. 490. It is not error to refuse an instruction although correct law, and applicable to the case if it has the effect of withdrawing material testimony from the jury. 9 Neb. 72. Correct and necessary instructions asked before jury retires should be given notwithstanding a rule requiring all instructions to be submitted before commencing argument. 5 Neb. 191. The jury are to judge of credibility of witnesses. 5 Neb. 438, 547. 7 Neb. 309. The court may lay down rules, but their application should be left to the jury. 6 Neb. 490. As to form of questions and cross-examination see 3 Neb. 123; 5 Neb. 183; 7 Neb. 87; 8 Neb. 157; 9 Neb. 241; 10 Neb. 387, and note. Discretion of court in granting non-suit. 9 Neb. 399. Where there is testimony tending to support a cause of action non-suit should not be granted. 9 Neb. 417. Where evidence is before the court, which is unimpeached the court cannot disregard it. If improper it should be excluded. If properly admitted it should be considered and given due weight. 6 Neb. 355. Additional evidence may be admitted after the case has been submitted. 8 Neb. 388, 390. Order of introducing evidence is discretionary. 10 Neb. 274. Party introducing erroneous evidence is bound by what it proves. 10 Neb. 573. If counsel are limited in time for argument, and no objection is made before submission of case to jury, it is too late afterward to complain. 8 Neb. 159. So if the record fails to show that counsel were not called to order for misconduct or that the court was requested to confine them within the bounds of legitimate discussion, the judgment will not be reversed. *Aliter*, if questions were properly presented. 3 Neb. 160. 9 Neb. 316. For provisions requiring instructions to be in writing see ante page 203, and notes. See 11 Neb. 116, 122. *Obey of Crest v. Childs*, 11 Neb. *Eaton v. Carruth*, *Id.*

state the evidence by which he expects to sustain it. *Second.* The defendant **must** then briefly state his defense and may briefly state the evidence he expects to offer in support of it. *Third.* The party who would be defeated if no evidence were given on either side, must first produce his evidence; the adverse party will then produce his evidence. *Fourth.* The parties will then be confined to rebutting evidence, unless the court for good reasons in furtherance of justice, permits them to offer evidence in their original case. *Fifth.* When the evidence is concluded either party may request instructions to the jury on points of law, which shall be given or refused by the court, which instructions shall be reduced to writing, if either party require it. *Sixth.* The parties may then submit or argue the case to the jury. In the argument, the party required first to produce his evidence shall have the opening and conclusion. If several defendants having separate defenses appear by different counsel, the court shall arrange their relative order. *Seventh.* The court may again charge the jury after the argument is concluded. [Id. G. S. 573.]

**SEC. 284. [View of property or place.]**—Whenever, in the opinion of the court, it is proper for the jury to have a view of property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed shall speak to them on any subject connected with the trial.

**SEC. 285. [Deliberation—Conduct.]**—When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place, under the charge of an officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night and at their meals. The officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court, and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

**SEC. 286. [Separation during trial.]**—If the jury are permitted to separate either during the trial, or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person, on the subject of the trial, and that it is their duty not to form or express any opinion thereon, until the cause is finally submitted to them.

**SEC. 287. [Instruction after retiring.]**—After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court, where the information upon the point of law shall be given, and the court may give its recollection as to the testimony on the point in dispute, in presence of or after notice to the parties or their counsel.

**SEC. 288. [Discharge of jury.]**—The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent, of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

**SEC. 289. [Second trial, when.]**—In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately or at a future time, as the court may direct.

#### THE VERDICT.

**SEC. 290. [Jury polled.]**—When the jury have agreed upon their verdict,

Sec. 285. It seems that merely allowing the jury to take with them documentary evidence, is not sufficient of itself to disturb their verdict. 4 Neb. 83.

Sec. 290. Verdict must respond to all material issues between the parties. 1 Neb. 317. Sealed verdict

they must be conducted into court, their names called by the clerk, and the verdict rendered by the foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the clerk asking each juror if it is his verdict. If any one answers in the negative, the jury must again be sent out for further deliberation.

SEC. 291. [**Requisites.**].—The verdict shall be written, signed by the foreman, and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagree, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury before they are discharged, be corrected by the court.

SEC. 292. [**General—Special.**].—The verdict of a jury is either general or special. A general verdict is that by which they pronounce, generally, upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds the facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the court but to draw from them conclusions of law.

SEC. 293. [**Rendition—Special verdict—Record.**].—In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict, in writing, upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered on the journal.

SEC. 294. [**Special finding controls general.**].—When the special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court may give judgment accordingly.

SEC. 295. [**Amount of recovery—Assessment.**].—When by the verdict either party is entitled to recover money of the adverse party, the jury in their verdict must assess the amount of recovery.

TRIAL BY THE COURT.

SEC. 296. [**Jury trial, how waived.**].—The trial by jury may be waived by the parties in actions arising on contract, and with the assent of the court, in other actions, in the following manner: *First.* By the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney. *Second.* By written consent in person, or by attorney, filed with the clerk. *Third.* By oral consent in open court entered on the journal.

SEC. 297. [**Finding.**].—Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its finding, except, generally, for the plaintiff or defendant, unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial; in which case the court shall state in writing the conclusions of fact found, separately from the conclusions of law.

TRIAL BY REFEREES.

SEC. 298. [**By consent of parties.**].—All or any of the issues in the action,

received by judge under certain circumstances, held to be a privy verdict and of no force and validity, not having been affirmed in open court. 4 Neb. 89. 10 Neb. 107.

SEC. 291. Where a verdict is defective in form merely, the court may direct jury to amend it. 7 Neb. 83. See also 11 Neb. 144.

SEC. 296. Jury may be waived and damages assessed by court in actions of replevin. 6 Neb. 473.

SEC. 297. Cited 2 Neb. 317. If finding be vague, uncertain and indefinite, it will not sustain the judgment. 3 Neb. 255. Finding against A and B, will not sustain a judgment against A and C. 8 Neb. 168. Findings have same weight as a verdict. 5 Neb. 89. 8 Neb. 426. 9 Neb. 187. If court omits to state its findings of fact and law separately when requested, and no exception is taken, it will be considered as a waiver of the demand and an acquiescence in a general finding. 7 Neb. 193. Where a special finding in its effect negatives facts alleged in answer, it is equivalent to an affirmative finding that they are untrue. 9 Neb. 188.

SEC. 298. A purely legal action cannot be referred, except by consent of parties. 3 Neb. 94. 5 Neb.

whether of fact or law, or both, may be referred, upon the written consent of the parties, or upon their oral consent in court entered upon the journal.

**SEC. 299. [By order of court.]**—When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in either of the following cases: *First.* Where the trial of an issue of fact shall require the examination of mutual accounts, or where the account is on one side only, and it shall be made to appear to the court that it is necessary that the party on the other side should be examined as a witness to prove the account; in which cases the referees may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein. *Second.* Where the taking of an account shall be necessary for the information of the court before judgment, in cases which may be determined by the court, or for carrying a judgment into effect. *Third.* Where a question of fact, other than upon the pleadings, shall arise upon motion or otherwise, in any stage of an action.

**SEC. 300. [How conducted—Duties—Powers.]**—The trial before referees is conducted in the same manner as a trial by the court. They have the same power to summon and enforce the attendance of witnesses, to administer all necessary oaths in the trial of the case, and to grant adjournments, as the court upon such trial. They must state the facts found and the conclusions of law, separately, and their decision must be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue, stands as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts, the report has the effect of a special verdict.

**SEC. 301. [Referees—How chosen.]**—In all cases of reference, the parties, except when an infant may be a party, may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly; and, if the parties do not agree, the court shall appoint one or more referees, not exceeding three, who shall be free from exception.

**SEC. 302. [Reference by county court.]**—A reference as provided in this chapter cannot be ordered by a probate court, except by consent of parties to the reference and referees.

**SEC. 303. [Exceptions.]**—It shall be the duty of the referees to sign any true exceptions taken to any order or decision by them made in the case, and return the same with their report to the court making the reference.

**SEC. 304. [Reference in vacation.]**—A judge in vacation, upon the written consent of the parties, may make any order of reference which the court, of which he is a member, could make in term time. In such case, the order of reference shall be made on the written agreement of the parties to refer, and shall be filed with the clerk of the court, with the other papers in the case.

**SEC. 305. [Referee—Oath.]**—The referees must be sworn or affirmed well and faithfully to hear and examine the cause, and to make a just and true report therein according to the best of their understanding. The oath may be administered by any person authorized to take depositions.

**SEC. 306. [Same—Compensation.]**—The referees shall be allowed such compensation for their services as the court may deem just and proper, which shall be taxed as a part of costs in the case.

154. 6 Neb. 382. But consent will be presumed when record fails to show that objections were made to a reference. 6 Neb. 382.

SEC. 300. See sec. 867 and note. Report has the same effect as verdict. 3 Neb. 93. 4 Neb. 199. The exceptions apply only to findings of fact or conclusion of law of the referee. 11 Neb. 130.

SEC. 301. In partition referee may be appointed to take account of rents and profits and to make partition of premises. 3 Neb. 92.

SEC. 303. When no exceptions are taken referee's finding of facts will be conclusive. 6 Neb. 378. Bill of exceptions should be signed by him. 10 Neb. 331. And to obtain a review of his decision a motion for a new trial is necessary. 5 Neb. 237. 11 Neb. 130.

SEC. 305. The failure to take oath is waived by parties proceeding to trial without objection on that ground. 5 Neb. 126, 156.



EXCEPTIONS.

**SEC. 307. [Defined.]**—An exception is an objection taken to a decision of the court upon a matter of law.

**SEC. 308. [When taken.]**—The party objecting to the decision must except at the time the decision is made, and time may be given to reduce the same to writing as hereinafter provided. [Amended 1877, 17. Took effect June 1, 1877.]

**SEC. 309. [Form.]**—No particular form of exception is required. The exception must be stated, with so much of the evidence as is necessary to explain it, and no more, and the whole as briefly as possible.

**SEC. 310. [How taken—Record.]**—Where the decision objected to is entered on the record, and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted, at the end of the decision, that he excepts.

**SEC. 311. [Bill of exceptions.]**—When the decision is not entered on the record or the grounds of objection do not sufficiently appear in the entry, the party excepting must reduce his exceptions to writing within fifteen (15) days, or in such time as the court may direct, not exceeding forty (40) days from the adjournment of the court *sine die*, and submit the same to the adverse party or his attorney of record for examination and amendment if desired. Such draft must contain all the exceptions taken upon which the party relies. Within ten days after such submission the adverse party may propose amendments thereto and shall return said bill with his proposed amendments to the other party, or his attorney of record. The bill and proposed amendments must, within ten days thereafter, be presented by the party seeking the settlement of the bill to the judge who heard or tried the case, upon five (5) days notice to the adverse party, or his attorney of record, at which time the judge shall settle the bill of exceptions. If no amendments are proposed, or if proposed and allowed, the proposed bill may be presented with the amendments, if any, to the judge for settlement without notice to the adverse party or his attorney of record. When settled, the bill must be signed by the judge with his certificate to the effect that the same is allowed. In case of the death of the judge, or when it is shown by affidavit that the judge is prevented by sickness, or absence from his district, as well as in cases where the parties interested shall agree upon the bill of exceptions (and shall have attached a written stipulation to that effect to the bill), it shall be the duty of the clerk to settle and sign the bill in the same manner as the judge is by this act required to do; and shall thereupon be filed with the papers in the case, and have the same force and effect as though signed by the court. In cases where a party seeking to obtain the allowance of a bill of exceptions has used due diligence in that behalf,

**SEC. 307.** General exceptions to a charge are unavailing. Each portion deemed erroneous must be pointed out and excepted to. 1 Neb. 129. 2 Neb. 335, 360. Must be taken at the time the charge is given. 3 Neb. 356. 6 Neb. 264. Grounds of objection to evidence should be stated. 1 Neb. 363. 3 Neb. 235, 279. 4 Neb. 48. 7 Neb. 438. So should grounds of its exclusion. 5 Neb. 230. Exceptions must not be indefinite. 5 Neb. 187. And see 2 Neb. 316. Objection to deposition. 4 Neb. 369.

**SEC. 308.** This section amended by "Act to amend sections 308 and 311 of chapter 57 of the statutes, entitled 'Procedure civil,' and to provide for the settling of bills of exceptions," 1877, 11, taking effect June 1, 1877. The original sections required bill to be signed in term. 1 Neb. 175. 3 Neb. 263, 158, 191. 5 Neb. 218. The exceptions must be taken at time decision is made. 7 Neb. 330.

**SEC. 309.** Cited 1 Neb. 175.

**SEC. 310.** No exception is necessary to a final order or judgment. 4 Neb. 375. 6 Neb. 224. 9 Neb. 256, and see 2 Neb. 316.

**SEC. 311.** The bill should state that it contains all the evidence. 1 Neb. 403. 4 Neb. 24, 582. 6 Neb. 417. Affidavits to be available must be preserved by bill. 6 Neb. 102. 8 Neb. 36. 10 Neb. 10. Arguments of counsel should be omitted. 7 Neb. 329. If bill is presented within the 60 days it may be signed afterward. 8 Neb. 97. If it do not appear at what time bill was presented to judge, the presumption is it was presented within the time required by law. *Id.* Where a shorter period is fixed by court the twenty days within which the bill must be presented to judge dates from that period. 8 Neb. 321. If bill be prepared within the proper time after term at which the decision is rendered it is sufficient, although trial took place at a former term. 8 Neb. 529. If judge resigns clerk cannot settle bill. 9 Neb. 39. Instructions being a part of the record need not be embodied in bill. 9 Neb. 39. The section applies both to legal and equitable actions. 10 Neb. 17. Before bill is signed judge should be satisfied that all parties have had an opportunity to examine it and propose such changes as they desire. *Id.* If testimony is offered and rejected the bill should set it forth to be available on error. 10 Neb. 235. If a party rely upon the fact that there was no evidence, in a case where evidence was necessary, he must establish it by a proper bill of exceptions. 10 Neb. 185. Effect of a stipulation by attorneys or parties. 8 Neb. 35, 437. These decisions made prior to the present amendment of this section. Instructions, motion for new trial and all matters required to be filed with the clerk and entered on the journal are not a part of the bill. *Eaton v. Carruth*, 11 Neb.

but has failed to secure the settlement and allowance of the same as herein required, it shall be competent for the judge who tried the cause, upon due showing of diligence and not otherwise, to extend the time herein allowed, but not beyond forty days additional to that herein provided, making such specific directions in that behalf as shall seem just to all parties. [Amended and took effect Mar. 1, 1881.]

SEC. 311 a. [Act applies to all cases.]—Sec. 2. This act shall apply to all cases hereafter decided as well as all that have been already adjudicated by final order or judgment; and that the provisions of this act shall apply to actions in equity sought to be appealed to the supreme court, under the act of March 3, 1878, entitled "An act to provide for appeals in actions in equity." [1881 § 2, 204.]

SEC. 312. [Disregarded, when.]—No exception shall be regarded, unless it is material, and prejudicial to the substantial rights of the party excepting.

SEC. 313. [Withdrawal from files.]—Exceptions taken to the decision of any court of record may, by leave of such court, be withdrawn from the files by the party taking the same, at any time before proceedings in error are commenced, and before the exceptions are recorded.

#### NEW TRIAL.

SEC. 314. [Defined—Grounds for allowance.]—A new trial is a re-examination in the same court of an issue of fact after a verdict by a jury, report of a referee, or a decision by the court. The former verdict, report or decision shall be vacated, and a new trial granted on the application of the party aggrieved, for any of the following causes affecting materially the substantial rights of such party: *First.* Irregularity in the proceedings of the court, jury, referee or prevailing party, or any order of the court, or referee, or abuse of discretion, by which the party was prevented from having a fair trial. *Second.* Misconduct of the jury or prevailing party. *Third.* Accident or surprise, which ordinary prudence could not have guarded against. *Fourth.* Excessive damages, appearing to have been given under the influence of passion or prejudice. *Fifth.* Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property. *Sixth.* That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law. *Seventh.* Newly discovered evidence, material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial. *Eighth.* Error of law occurring at the trial, and excepted to by the party making the application.

SEC. 315. [Not granted—Smallness of damages.]—A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, nor any other action where the damages shall equal the actual pecuniary injury sustained.

SEC. 316. [Application for, when made.]—The application for a new trial must be made at the term the verdict, report or decision is rendered, and, except for the cause of newly discovered evidence material for the party applying,

SEC. 311 a. Appeals to supreme court, see section 675.

SEC. 314. Alleged errors occurring during the trial should be assigned in the motion for a new trial. 1 Neb. 398. 3 Neb. 117, 446. 4 Neb. 43, 415. 5 Neb. 101, 186. 6 Neb. 129, 381. 7 Neb. 223. 8 Neb. 138, 143, 159. 10 Neb. 390, 475. But as to particularity of assignment, see amendment to sec. 317. Assignments should be definite. 7 Neb. 192. 8 Neb. 276, 347, 137. Verdict will not be set aside merely because it is against weight of evidence, when there is any evidence to support it. 1 Neb. 170. Nor where testimony is merely cumulative, and which could not affect the result. 7 Neb. 58, 224. 8 Neb. 414. Nor where there is an apparent conflict in the testimony or a mere difference of opinion between the court or jury as to weight of evidence. 3 Neb. 356. 5 Neb. 89, 222. 6 Neb. 157, 315, 401, 490. 7 Neb. 284, 309. *Aliter.* Where there is an entire failure of proof. 7 Neb. 146. If it is clearly wrong it should be set aside, but if court only doubt its correctness it should not be disturbed. 5 Neb. 89, 222. 8 Neb. 372. 9 Neb. 71. Where on a trial for bastardy an *alibi* was established by testimony of two witnesses in addition to that of the accused, as against the unsupported testimony of the mother of the child, held that verdict should be set aside. 6 Neb. 308. And where in an action of conversion, plaintiff did not prove value of goods until case had gone to the jury, and court restricted defendant to value and prevented him from showing that plaintiff was not the owner of the property, held that a new trial should be granted. 8 Neb. 389. The admission of immaterial evidence, not prejudicial, is no ground for new trial. 9 Neb. 181. Objection to affidavit used on hearing of motion for new trial should be made to its introduction as evidence. If not so made, it is waived. 10 Neb. 106.

SEC. 315. Cited 1 Neb. 168.

SEC. 316. If motion is filed after the three days it is of no avail. 3 Neb. 446. 6 Neb. 532.

which he could not with reasonable diligence have discovered and produced at the trial, shall be within three days after the verdict or decision was rendered, unless unavoidably prevented.

**SEC. 317. [Same—Upon written motion.]**—The application must be by motion upon written grounds, filed at the time of making the motion. It shall be sufficient however in assigning the grounds of the motion to assign the same in the language of the statute and without further or other particularity. The causes enumerated in subdivisions 2, 3, and 7, of section 314, must be sustained by affidavits showing their truth, and may be controverted by affidavits. [Amended Mar. 1. Took effect June 1, 1881. Laws p. 201.]

**SEC. 318. [Newly discovered grounds.]**—Where the grounds for a new trial could not, with reasonable diligence, have been discovered before, but are discovered after the term at which the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases; on which a summons shall issue, be returnable and served, or publication made, as prescribed in section seventy-nine. The facts stated in the petition shall be considered as denied without answer, and if the service shall be complete in vacation, the case shall be heard and summarily decided at the ensuing term. The case shall be placed on the trial docket, and the witnesses shall be examined in open court, or their depositions taken as in other cases, but no such petition shall be filed more than one year after the final judgment was rendered.

#### GENERAL PROVISIONS.

**SEC. 319. [Rate of damages.]**—Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.

**SEC. 320. [Provisions applicable—Trial by court or jury.]**—The provisions of this title respecting trials by jury, apply, so far as they are in their nature applicable, to trials by the court.

#### TIME OF TRIAL.

**SEC. 321. [Clerk's books.]**—The clerk of the district court shall keep at least eight books, to be called the appearance docket, the trial docket, the journal, the complete record, the execution docket, the fee book, the general index, and the judgment record. [Amended to take effect Sept. 1, 1873. G. S. 579, 713.]

**SEC. 322. [Same—Entries.]**—On the appearance docket, he shall enter all actions in the order in which they were brought, the date of the summons, the time of the return thereof by the officer, and his return thereon, the time of filing the petition, and all subsequent pleadings. On the general index he shall enter the names of the parties to every suit, both direct and inverse, with the page and book where all proceedings in such action may be found. The judgment record shall contain the judgment debtor and the judgment creditor, arranged alphabetically, the date of the judgment, the amount of the same, and the amount of costs, with the page and book where the same may be found. Transcripts of judgments from justices of the peace, or courts of probate, filed in the district court shall be entered upon said judgment record; and whenever any judgment is paid off and discharged, the clerk shall enter such fact upon the judgment record in a column provided for that purpose. [Id.]

**SEC. 323. [Trial docket—Judgment by default—Frivolous demurrer.]**—The trial docket shall be made out by the clerk of the court at least

SEC. 317. When a judgment of a justice is brought on error to the district court and affirmed no motion for a new trial is necessary. 9 Neb. 504. Affidavit must state what particular effort a party moving for a new trial on ground of newly discovered evidence has made to procure the testimony. 3 Neb. 268. 8 Neb. 389.

SEC. 318. New trials granted under a particular state of facts. 4 Neb. 108. 5 Neb. 477. 7 Neb. 298. 8 Neb. 389. 9 Neb. 395, 526. 10 Neb. 449. Allegations must be affirmatively stated and not upon information. 7 Neb. 189. Petition is liable to demurrer. Id.

SEC. 321. This and the 2 following sections amended by "An act to amend the code of civil procedure." taking effect Sept. 1, 1873. Gen. Stat. 713.

SEC. 322. Judgment is not a lien until properly indexed. 7 Neb. 171. Liability of clerk for neglect in not entering transcript properly. 10 Neb. 524.

twelve days before the first day of each term of the court; and the actions shall be set for particular days in the order in which the issues were made up, whether of law or of fact, and so arranged that the cases set for each day shall be tried as nearly as may be on that day. For the purpose of arranging said docket, an issue shall be considered as made up when either party is in default of a pleading. If the defendant fails to answer or demur, the cause, for the purpose of this section shall be deemed to be at issue upon questions of fact, but in every such case the plaintiff may move for and take such judgment as he is entitled to, on the defendant's default, on or after the day on which said action shall be set for trial. No witnesses shall be subpoenaed in any case while the cause stands upon issue of law; and whenever the court shall regard the demurrer in any case as frivolous, and put in for delay only, no leave to answer or reply shall be given, unless upon payment of all costs then accrued in the action. [Id.]

SEC. 324. [**Cases tried in order.**].—The trial of an issue of fact, and the assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless, by consent of the parties, or the order of the court, they are continued, or placed at the heel of the docket. The time of hearing all other cases shall be in order in which they are placed on the docket, unless the court in its discretion shall otherwise direct. The court may in its discretion hear at any time a motion; and may by rule prescribe the time for hearing motions.

SECS. 325-326. [**Repealed. Laws of 1867, twelfth session territory, page 7.**]

SEC. 327. [**Bar docket.**].—The clerk shall make out a copy of the trial docket for the use of the bar before the first day of the term of court.

SEC. 327 a. [**Same—Printed.**].—SEC. 1. That the trial docket provided for in section 327, of the code of civil procedure, shall be printed when the judge shall deem the same advisable, and shall so order, and the cost of the said printing shall be audited and paid by the respective counties as in other cases. [1875, 59.]

## TITLE X.—EVIDENCE.

### COMPETENCY OF WITNESSES.

SEC. 328. [**Witnesses—Competent—Incompetent.**].—Every human being of sufficient capacity to understand the obligation of an oath, is a competent witness in all cases civil and criminal, except as otherwise herein declared. The following persons shall be incompetent to testify: *First.* Persons of unsound mind at the time of their production. *Second.* Indians and negroes who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them intelligently and truly. *Third.* Husband and wife, concerning any communication made by one to the other during marriage, whether called as a witness while that relation subsists or afterward. *Fourth.* An attorney, concerning any communication made to him by his client in that relation or his advice thereon, without the client's consent in open court or in writing produced in court. *Fifth.* A clergyman or priest, concerning any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession.

SEC. 324. See sec. 281 a, ante p. 567.

SEC. 327 a. "An act relating to the trial docket in the district court," 1875, 59.

SEC. 328. The code has not changed the character of an oath. An Indian who answered that he meant to tell the truth but failed to answer the questions propounded to test his capacity held incompetent. 10 Neb. 397. Rules governing admission of evidence. 1 Neb. 121. 2 Neb. 241. 3 Neb. 123. 4 Neb. 77, 190, 563. 6 Neb. 352. 7 Neb. 219, 321. 9 Neb. 174. 10 Neb. 167, 445. Presumptions. 3 Neb. 284. 4 Neb. 208. 6 Neb. 103, 275. 8 Neb. 319. 10 Neb. 184. Evidence in particular cases. 1 Neb. 346. 3 Neb. 140, 198, 268. 4 Neb. 31, 97, 122, 166, 179, 193, 211, 367, 376, 426, 582, 589. 5 Neb. 145, 161, 283, 408, 412, 517, 543. 6 Neb. 2, 27, 93, 167, 493, 549. 7 Neb. 322. 8 Neb. 80, 215, 406. 9 Neb. 47. 10 Neb. 54, 144, 218, 406, 472, 479, 492, 502, 515, 525. Impugning witnesses. 2 Neb. 318. 6 Neb. 316. 9 Neb. 454. Examination and cross examination of witnesses. 3 Neb. 123. 5 Neb. 181, 549. 7 Neb. 84. 8 Neb. 152. 9 Neb. 241. 10 Neb. 387. Witness must state facts. His understanding or opinion of the object of a transaction is not evidence. 4 Neb. 183. 9 Neb. 174. But where plaintiff on cross examination of defendant, asked for and obtained his opinion on a subject, he is not in a situation to complain if such opinion is repeated by the witness on his re-examination in chief. 10 Neb. 275.

**SEC. 329. [Same—Criminals—Executors, etc.]**—No person having a direct legal interest in the result of any civil cause or proceeding shall be a competent witness therein, when the adverse party is an executor, administrator, or legal representative of a deceased person, unless the testimony of such deceased person shall have been taken during his lifetime, and is to be read in evidence in such cause or proceeding. [Amended 1877, 13. Took effect June 1, 1877.]

**SEC. 330. [Credibility.]**—Facts which have heretofore caused the exclusion of testimony, may still be shown for the purpose of lessening its credibility.

**SEC. 331. [Husband and wife.]**—The husband can in no case be a witness against the wife, nor the wife against the husband, except in a criminal proceeding for a crime committed by the one against the other, but they may in all criminal prosecutions be witnesses for each other.

**SEC. 332. [Same.]**—Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal, in testimony, any such communication made while the marriage subsisted.

**SEC. 333. [Professional communications.]**—No practicing attorney, counsellor, physician, surgeon, minister of the gospel, or priest of any denomination shall be allowed, in giving testimony, to disclose any confidential communication, properly intrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline.

**SEC. 334. [Same—Waiver.]**—The prohibitions in the preceding sections do not apply to cases where the party in whose favor the respective provisions are enacted waives the rights thereby conferred.

**SEC. 335. [Public officers.]**—A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

**SEC. 336. [Civil liability.]**—A witness is not excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability.

**SEC. 337. [Criminal liability—Disgrace.]**—But when the matter sought to be elicited would tend to render him criminally liable, or to expose him to public ignominy, he is not compelled to answer, except as provided in the next section.

**SEC. 338. [Previous conviction, how proved.]**—A witness may be interrogated as to his previous conviction for a felony. But no other proof of such conviction is competent except the record thereof.

**SEC. 339. [Whole matter given.]**—When part of an act, declaration, conversation, or writing, is given in evidence by one party, the whole on the same subject may be inquired into by the other; thus when a letter is read, all other letters on the same subject between the parties may be given. And when a detached act, declaration, conversation or writing, is given in evidence, any other act, declaration or writing, which is necessary to make it fully understood, or to explain the same, may also be given in evidence.

**SEC. 340. [Writing controls printed matter.]**—When an instrument consists partly of written and partly of printed form, the former controls the latter, where the two are inconsistent.

**SEC. 341. [Construction of agreements.]**—When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it.

SEC. 329. Amended by "An act to amend section three hundred and twenty-nine (329), chapter fifty-seven (57) of the statutes of Nebraska," entitled "The code of civil procedure," passed Feb. 19, took effect June 1, 1877, Laws p. 13. The word "representative" applies to any person who has succeeded to the rights of the deceased by purchase, descent or operation of law. 3 Neb. 350. A husband is a competent witness, if the suit is by the wife relative to her separate property. 9 Neb. 402.

SEC. 331. See sec. 10, chapter 25, ante p. 253.

SEC. 342. [**Works of science and art.**].—Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest.

SEC. 343. [**Subscribing witness absent—Proof of execution.**].—When a subscribing witness is absent from the county in which the action is pending, denies, or does not recollect the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence. [R. S. 451. Amended to take effect Feb. 18, 1873. G. S. 583.]

SEC. 344. [**Handwriting.**].—Evidence respecting handwriting may be given by comparisons made, by experts or by the jury, with writings of the same person which are proved to be genuine.

SEC. 345. [**Writings of deceased persons.**].—The entries and other writings of a person deceased, made at or near the time of the transaction, and in a position to know the facts therein stated, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it or when made in a professional capacity or in the ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law.

SEC. 346. [**Books of account.**].—Books of account, containing charges by one party against the other, made in the ordinary course of business, are receivable in evidence only under the following circumstances, subject to all just exceptions as to their credibility: *First.* The books must show a continuous dealing with persons generally, or several items of charges at different times against the other party, in the same book. *Second.* It must be shown, by the party's oath, or otherwise, that they are his books of original entries. *Third.* It must be shown, in like manner, that the charges were made at or near the time of the transaction therein entered, unless satisfactory reasons appear for not making such proof. *Fourth.* The charges must also be verified by the party or the clerk who made the entries, to the effect that they believe them just and true, or a sufficient reason must be given why the verification is not made.

SEC. 347. [**Private writing.**].—Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof.

SEC. 348. [**Judges.**].—The judge of the court is a competent witness for either party, and may be sworn upon the trial. But in such case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge.

SEC. 349. [**Notarial protest.**].—The usual protest by a notary public, without proof of his signature or notarial seal, is evidence of the dishonor and notice of a bill of exchange or promissory note.

#### MEANS OF PRODUCING WITNESSES.

SEC. 350. [**Subpœna—Service.**].—The clerks of the several courts and judges of the probate courts shall, on application of any person having a cause or any matter pending in court, issue a subpœna for witnesses under the seal of the court, inserting all the names required by the applicant in one subpœna, which may be served by any person not interested in the action, or by the sheriff, coroner, or constable; but when served by any person other than a public officer, proof of service shall be shown by affidavit; but no costs of serving the same shall be allowed, except when served by an officer.

SEC. 351. [**Same—Contents.**].—The subpœna shall be directed to the person therein named, requiring him to attend at a particular time and place, to tes-

SEC. 344. A witness who is acquainted with the handwriting of a person whose signature is in dispute is competent to give his opinion of it, although not an expert. 5 Neb. 249. But one who is not an expert or who has no knowledge of such handwriting or signature, is not competent to give such an opinion from a comparison of hands. Id. 250.

SEC. 346. Witness may refresh his memory from secondary book accounts. 10 Neb. 169.

tify as a witness; and it may contain a clause, directing the witness to bring with him any book, writing, or other thing under his control, which he is bound by law to produce as evidence.

SEC. 352. [**Same—To give deposition.**]—When the attendance of a witness before any officer authorized to take depositions is required, the subpoena shall be issued by such officer.

SEC. 353. [**Same—How served.**]—The subpoena shall be served either by reading or by copy delivered to the witness or left at his usual place of residence; but such copy need not contain the name of any other witness.

SEC. 354. [**Witness—Obligation to attend trial.**]—A witness shall not be obliged to attend for examination on the trial of a civil action, except in the county of his residence, nor to attend to give his deposition out of the county where he resides, or where he may be when the subpoena is served upon him.

SEC. 355. [**Same—Demand of fees.**]—A witness may demand his traveling fees, and fee for one days attendance, when the subpoena is served upon him, and if the same be not paid, the witness shall not be obliged to obey the subpoena. The fact of such demand and non-payment shall be stated in the return.

SEC. 356. [**Same—Contempt.**]—Disobedience of a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe a deposition, when lawfully ordered, may be punished as a contempt of the court or officer by whom his attendance or testimony is required.

SEC. 357. [**Same—Attachment for contempt.**]—When a witness fails to attend in obedience to a subpoena, (except in case of a demand and failure to pay his fees), the court or officer before whom his attendance is required, may issue an attachment to the sheriff, coroner, or constable of the county, commanding him to arrest and bring the person therein named before the court or officer, at a time and place to be fixed in the attachment, to give his testimony, and answer for the contempt. If the attachment be not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an undertaking with surety for his appearance. Such sum shall be endorsed on the back of the attachment, and if no sum is so fixed and endorsed, it shall be one hundred dollars. If the witness be not personally served, the court may, by a rule, order him to show cause why an attachment should not issue against him.

SEC. 358. [**Same—Punishment.**]—The punishment for the contempt mentioned in section three hundred and fifty-six, shall be as follows: When the witness fails to attend in obedience to the subpoena, (except in case of a demand and failure to pay his fees), the court or officer may fine the witness in a sum not exceeding fifty dollars. In other cases, the court or officer may fine the witness in a sum not exceeding fifty dollars nor less than five dollars, or may imprison him in the county jail, there to remain until he shall submit to be sworn, to testify, or give his deposition. The fine imposed by the court shall be paid into the county treasury, and that imposed by the officer shall be for the use of the party for whom the witness was subpoenaed. The witness shall also be liable to the party injured, for any damages occasioned by his failure to attend, or his refusal to be sworn, to testify, or give his deposition.

SEC. 359. [**Same—Imprisonment—Release.**]—A witness so imprisoned by an officer before whom his deposition is being taken, may apply to a judge of the supreme court, district court, or probate court, who shall have power to discharge him if it appear that his imprisonment is illegal.

SEC. 360. [**Attachment—Commitment—Contents.**]—Every attachment for the arrest, or order of commitment to prison of a witness by a court or officer, pursuant to this chapter, must be under the seal of the court or officer, if he have an official seal, and must specify particularly the cause of the arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the sheriff, coroner or any constable of the county where such witness

resides or may be at the time, and shall be executed by committing him to the jail of such county, and delivering a copy of the order to the jailer.

SEC. 361. [**Prisoners—Examination.**—A person confined in any prison in this state, may, by order of any court of record, be required to be produced for oral examination in the county where he is imprisoned; but in all other cases his examination must be by deposition.

SEC. 362. [**Same—Deposition.**—While a prisoner's deposition is being taken, he shall remain in custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition.

SEC. 363. [**Witness exempt from service of process.**—A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county, while going, returning or attending in obedience to a subpoena.

SEC. 364. [**Witness—Attendance—Fees.**—At the commencement of each day after the first day, a witness may demand his fees for that day's attendance in obedience to a subpoena, and if the same be not paid he shall not be required to remain.

SEC. 365. [**Same—Oath.**—Before testifying, the witness shall be sworn to testify the truth, the whole truth, and nothing but the truth. The mode of administering an oath shall be such as is most binding upon the conscience of the witness.

#### MODE OF TAKING THE TESTIMONY OF WITNESSES.

SEC. 366. [**Modes of taking testimony.**—The testimony of witnesses may be taken in three modes: *First.* By affidavit. *Second.* By deposition. *Third.* By oral examination.

SEC. 367. [**Affidavit.**—An affidavit is a written declaration under oath, made without notice to the adverse party.

SEC. 368. [**Deposition.**—A deposition is a written declaration under oath, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories.

SEC. 369. [**Oral examination.**—An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

SEC. 370. [**Affidavit, when used.**—An affidavit may be used to verify a pleading, to prove the service of a summons, notice or other process, in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or upon a motion, and in any other case permitted by law.

SEC. 371. [**Same—Before whom taken.**—An affidavit may be made in and out of this state, before any person authorized to take depositions, and must be authenticated in the same way, except as provided in section one hundred and eighteen.

#### DEPOSITIONS.

SEC. 372. [**When used.**—The deposition of any witness may be used only in the following cases: *First.* When the witness does not reside in the county where the action or proceeding is pending, or is sent for trial by change of venue, or is absent therefrom. *Second.* When, from age, infirmity, or imprisonment, the witness is unable to attend the court, or is dead. *Third.* When the testimony is required upon a motion, or in any other case where the oral examination of a witness is not required.

SEC. 373. [**When taken.**—Either party may commence taking testimony by depositions, at any time after service upon the defendant.

SEC. 374. [**Before, whom taken, within state.**—Depositions may be

SEC. 366. See note to sec. 328.

SEC. 367. It should show on its face that it was taken within the officer's jurisdiction. 7 Neb. 152.

SEC. 372. Depositions taken in a cause by one plaintiff with whom others are afterwards joined, may be read in evidence, if applicable, after the amendment as to parties. 1 Neb. 354.



taken in this state before a judge or clerk of the supreme or district court, or before a probate judge, justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, or before a master commissioner, or any person empowered by a special commission; but depositions taken in this state, to be used therein, must be taken by an officer or person whose authority is derived within the state.

**SEC. 375. [Same—Without state.]**—Depositions may be taken out of the state by a judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this state to take depositions, or any person authorized by a special commission from this state.

**SEC. 376. [Same—Relative—Attorney.]**—The officer before whom depositions are taken, must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding.

**SEC. 377. [Dedimus potestatum.]**—Any court of record of this state, or any judge thereof, is authorized to grant a commission to take depositions within or without the state. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court granting the same, and depositions under it must be taken upon written interrogatories, unless the parties otherwise agree.

**SEC. 378. [Same—Notice—Service.]**—Prior to the taking of any deposition, unless taken under a special commission, a written notice specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent or attorney of record, or left at his usual place of abode. The notice shall be served so as to allow the adverse party sufficient time by the usual route of travel to attend, and one day for preparation, exclusive of Sundays, and the day of service; and the examination may, if so stated in the notice, be adjourned from day to day. The notice shall also specify the names of the witnesses to be examined. And when the place of taking the deposition shall be out of the state, or more than fifty miles from the place of trial of the action, the adverse party, within forty-eight hours after the service of the notice, may serve upon the party taking the deposition, his agent or attorney of record, written cross interrogatories to be propounded to any witness, and such last-named party shall cause them to be transmitted to the officer before whom the deposition is taken, who shall propound them to the witness, and they shall be answered subject to objections, as in other cases. [Amended 1875, §7. Took effect Mar. 1, 1875.]

**SEC. 379. [Same—Notice to non-resident.]**—When the party against whom the deposition is to be read, is absent from, or a non-resident of the state, and has no agent or attorney of record therein, he may be notified of the taking of the deposition by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county, and if not, in some newspaper printed in this state, of general circulation in that county. The publication must contain all that is required in a written notice, and may be proved in the manner prescribed in section eighty.

**SEC. 380. [By whom written.]**—The deposition shall be written in the presence of the officer taking the same, either by the officer, the witness, or some disinterested person, and subscribed by the witness.

**SEC. 381. [Sealed—Transmitted to clerk.]**—The deposition so taken shall be sealed up and endorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the court where the action or proceeding is pending. It shall remain under seal until opened by the clerk by order of the court, or at the request of a party to the action or proceeding, or his attorney.

SEC. 375. Clerk of a court out of the state cannot take depositions except authorized by special commission. 4. Neb. 368.

SEC. 378. Amendment took effect March 1, 1875, and consists of the addition of the last two paragraphs.

**SEC. 382. [Where used.]**—Depositions taken pursuant to this article, shall be admitted in evidence on the trial of any civil action or proceeding pending before any justice of the peace, mayor, or other judicial officer of a city or town corporate, or before any arbitrators or referees, and such deposition shall be sealed up, endorsed with the title of the action or proceeding, the name of the officer taking the same, and addressed and transmitted by such officer to such justice, mayor, or other judicial officer, arbitrators or referees.

**SEC. 383. [When used.]**—When a deposition has once been taken, it may be read in any stage of the same action or proceeding, or in any other action or proceeding, upon the same matter between the same parties, subject, however, to all such exceptions as may be taken thereto under the provisions of this title.

**SEC. 384. [Authentication.]**—Depositions taken pursuant to this title, by any judicial or other officer herein authorized to take depositions, having a seal of office, whether resident in this state or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other or further act of authentication shall be required. If the officer taking the same have no official seal, the deposition, if not taken in this state, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof adduced in court, or by the official certificate and seal of any secretary or other officer of state keeping the great seal thereof, or of the clerk or prothonotary of any court having a seal, attesting that such judicial or other officer was at the time of taking the same, within the meaning of this chapter, authorized to take the same. But if the deposition be taken within this state by an officer having no seal, or within or without this state under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

**SEC. 385. [Certificate of officer.]**—The officer taking the deposition shall annex thereto a certificate showing the following facts: *First.* That the witness was first sworn to testify the truth, the whole truth, and nothing but the truth. *Second.* That the deposition was reduced to writing by some proper person (naming him). *Third.* That the deposition was written and subscribed in the presence of the officer certifying thereto. *Fourth.* That the deposition was taken at the time and place specified in the notice.

**SEC. 386. [Not read, when witness present.]**—When a deposition is offered to be read in evidence, it must appear to the satisfaction of the court, that for any cause specified in section three hundred and seventy-two, the attendance of the witness cannot be procured.

**SEC. 387. [When filed.]**—Every deposition intended to be read in evidence on the trial, must be filed at least one day before the day of trial.

**SEC. 388. [Fees.]**—The following fees shall be allowed for taking depositions in the state, viz: Swearing each witness, five cents; for each subpoena, attachment, or order of commitment, fifty cents; for each hundred words contained in such deposition and certificate, ten cents and no more; and such officer may retain the same until such fees are paid. Such officer shall also tax the costs of the sheriff or other officer who shall serve the process aforesaid, and fees of the witness, and may also, if directed by the persons entitled thereto, retain such depositions until the said fees are paid.

#### EXCEPTIONS TO DEPOSITIONS.

**SEC. 389. [Form—Filing.]**—Exceptions to depositions shall be in

**SEC. 384.** Depositions taken in Illinois by a notary public certified to under his hand and seal are admissible. 4 Neb. 173. Certificate should show county and state or country where the same is taken, as well as the state or country from which the officer derives his official character. 8 Neb. 79. Whether it is proper to take depositions in the office of one of the parties or his attorney, or before an officer who is also clerk or student of such party or attorney, *quære.* Id.

**SEC. 385.** It is not necessary that certificate should show in terms that the oath was administered in or with reference to the cause. 1 Neb. 119.

**SEC. 386.** Although court may err in refusing to suppress deposition, yet if the moving party fail to object to its being read at the trial, he cannot complain of such error in appellate court. 4 Neb. 369.

**SEC. 389.** If deposition is suppressed, and no exception taken, the correctness of the ruling cannot be questioned on error in the supreme court. 7 Neb. 329.

writing, specifying the grounds of objection, and filed with the papers in the cause.

**SEC. 390. [When made.]**—No exception other than for incompetency or irrelevancy shall be regarded, unless made and filed before the commencement of the trial.

**SEC. 391. [When considered.]**—The court shall, on motion of either party, hear and decide the questions arising on exceptions to depositions, before the commencement of the trial.

**SEC. 392. [Errors waived.]**—Errors of the court in its decisions upon exceptions to depositions are waived, unless excepted to.

#### GENERAL PROVISIONS.

**SEC. 393. [Proof of genuineness of documents.]**—Either party may exhibit to the other or his attorney, at any time before the trial, any paper or document material to the action, and request an admission in writing of genuineness. If the adverse party or his attorney fail to give the admission in writing within four days after the request, and if the party exhibiting the paper or document be afterward put to any cost or expense to prove its genuineness, and the same be finally proved or admitted on the trial, such costs and expenses, to be ascertained at the trial, shall be paid by the party refusing to make the admission, unless it shall appear to the satisfaction of the court that there were good reasons for the refusal.

**SEC. 394. [Inspection of papers by adverse party.]**—Either party or his attorney may demand of the adverse party an inspection and copy, or permission to take a copy of a book, paper, or document in his possession or under his control, containing evidence relating to the merits of the action or defense therein. Such demand shall be in writing, specifying the book, paper, or document, with sufficient particularity to enable the other party to distinguish it, and if compliance with the demand within four days be refused, the court or judge, on motion and notice to the adverse party, may, in their discretion, order the adverse party to give the other, within a specified time, an inspection and copy, or permission to take a copy, of such book, paper, or document; and on failure to comply with such order, the court may exclude the paper or document from being given in evidence, or, if wanted as evidence by the party applying, may direct the jury to presume it to be such as the party by affidavit alleges it to be. This section is not to be construed to prevent a party from compelling another to produce any book, paper, or document when he is examined as a witness.

**SEC. 395. [Copy of writing of adverse party.]**—Either party or his attorney, if required, shall deliver to the other party or his attorney, a copy of any deed, instrument, or other writing, whereon the action or defense is founded, or which he intends to offer in evidence at the trial. If the plaintiff or defendant shall refuse to furnish the copy or copies required, the party so refusing shall not be permitted to give in evidence, at the trial, the original, of which a copy has been refused. This section shall not apply to any paper a copy of which is filed with a pleading.

**SEC. 396. [Laws of other states—Printed copies.]**—Printed copies in volumes of statutes, code, or other written law, enacted by any other territory, state, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts or tribunals of such territory, state or government, shall be admitted by the courts and officers of this state on all occasions, as presumptive evidence of such laws. The unwritten or common law of any other territory, state, or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts may also be admitted as presumptive evidence of such law.

**SEC. 397. [Concealment of witness—Power of officer.]**—If a witness

conceal himself, or in any other manner attempt to avoid being personally served with a subpoena, any sheriff or constable, having the subpoena, may use all necessary and proper means to serve the same, and for that purpose may break into any building or other place where the witness is to be found, having first made known his business and demanded admittance.

**SEC. 398. [Party subpoenaed—Failing to appear.]**—In addition to the above remedies, if a party to a suit in his own right, on being duly subpoenaed, fail to appear and give testimony, the other party may, at his option, have a continuance of the cause as in cases of other witnesses, and at the cost of the delinquent.

**SEC. 399. [Papers produced by rule of court.]**—The supreme or district court may, by rule, require the production of any papers or books which are material to the just determination of any cause pending before it, for the purpose of being inspected and copied by or for the party thus calling for them.

**SEC. 400. [Same—Petition for.]**—The petition for that purpose must state the facts expected to be proved by such books or papers, and that as the petitioner believes, such books and papers are under the control of the party against whom the rule is sought, and must show wherein they are material. The rule shall thereupon be granted to produce the book and papers, or show cause to the contrary, if the court deem such rule expedient and proper.

**SEC. 401. [Same—Failure to obey rule.]**—On failing to obey the rule or show sufficient cause for such failure, the same consequences shall ensue as if the party had failed to appear and testify, when subpoenaed by the party now calling for the books and papers.

**SEC. 402. [Writing called for—When used.]**—Though a writing called for by one party is by the other produced, the party thus calling for it, is not obliged to use it as evidence in the case.

**SEC. 403. [Proof of publication.]**—Publications required by law to be made in a newspaper, may be proved by affidavit of any person having knowledge of the fact, specifying the time when and the paper in which the publication was made, but such affidavit must, for the purposes now contemplated, be made within six months after the last day of publication.

**SEC. 404. [Proof of service.]**—The posting up or service of any notice or other paper required by law, may be proved by the affidavit of any competent witness, attached to a copy of said notice or paper, and made within six months of the time of such posting up.

**SEC. 405. [Proof by affidavit.]**—Any other fact which is required to be shown by affidavit, and which may be required for future use in any action or other proceeding, may be proved by pursuing the course above indicated, as nearly as the circumstances of the case will admit.

**SEC. 406. [Same—Perpetuation.]**—Such proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in the office of the judge of probate, and the original affidavit appended to the notice or paper, if there be one, and if not the affidavit by itself is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient.

**SEC. 407. [Field notes or plat of county surveyor.]**—A copy of the field notes of any county surveyor, or a plat made by him, and certified under oath as correct, may be received as evidence to show the shape or dimensions of a tract of land, or any other fact whose ascertainment requires only the exercise of scientific skill or calculation.

**SEC. 408. [Certified copies of records.]**—Duly certified copies of all records and entries or papers belonging to any public office, or by authority of law filed to be kept therein, shall be evidence in all cases of equal credibility with the original records or papers so filed.

**SEC. 403.** Cited 10 Neb. 77.

**SEC. 408.** This does not prevent the oral testimony of a witness who saw entries of a public record made.  
7 Neb. 337.

**SEC. 409. [Same—How obtained.]**—Every officer having the custody of a public record or writing, is bound to give any person on demand a certified copy thereof, on payment of the legal fees therefor.

**SEC. 410. [Lost official papers—Certificate.]**—The certificate of a public officer that he has made diligent and ineffectual search for a paper in his office is of the same efficacy in all cases as if such officer had personally appeared and sworn to such facts.

**SEC. 411. [Land office receipts.]**—The usual duplicate receipt of the receiver of any land office, or, if that be lost or destroyed, or beyond the reach of the party, the certificate of such receiver, that the books of his office show the sale of a tract of land to a certain individual, is proof of title equivalent to a patent against all but the holder of an actual patent.

**SEC. 412. [Official signatures—Genuineness.]**—In the cases contemplated in the last three sections, the signature of the officer shall be presumed to be genuine until the contrary is shown.

**SEC. 413. [Proof of judicial records.]**—A judicial record of this state, or of any other federal court of the United States, may be proved by the producing of the original, or by a copy thereof, certified by the clerk or the person having the legal custody thereof, authenticated by his seal of office, if he have one.

**SEC. 414. [Same—Of other states.]**—That of a sister state may be proved by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of a judge, chief justice, or presiding magistrate, that the attestation is in due form of law.

**SEC. 415. [Same—Justices of the peace.]**—The official certificate of a justice of the peace of any of the United States, to any judgment, and the preliminary proceeding before him, supported by the official certificate of the clerk of any court of record within the county in which such justice resides, stating that he is an acting justice of the peace of that county, and that the signature of his certificate is genuine, is sufficient evidence of such proceedings and judgment.

**SEC. 416. [Same—Foreign countries.]**—Copies of records and proceedings in the courts of a foreign country may be admitted in evidence, upon being authenticated as follows: *First.* By the official attestation of the clerk or officer in whose custody such records are legally kept. *Second.* By the certificate of one of the judges or magistrates of such court, that the person so attesting is the clerk or officer legally entrusted with the custody of such records, and that the signature to his attestation is genuine. *Third.* By the official certificate of the officer who has the custody of the principal seal of the government under whose authority the court is held, attested by said seal, stating that such court is duly constituted, specifying the general nature of its jurisdiction, and verifying the seal of the court.

**SEC. 417. [Acts of executives.]**—Acts of the executive of the United States, or of this state, or of any state in the union, or of a foreign government are proved by the records of the state department of the respective governments, or by public documents purporting to have been printed by order of the legislature of those governments respectively, or by either branch thereof.

**SEC. 418. [Legislative proceedings.]**—The proceedings of the legislature of this state, or any state of the union, or of the United States, or of any foreign government are proved by the journals of those bodies, respectively, or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceedings were had, or by a copy purporting to have been printed by their order.

**SEC. 419. [Statute law—Printed copies.]**—Printed copies of the statute laws of this state, or any of the United States, or of congress, or of any foreign gov-

**SEC. 410.** Cited 2 Neb. 108. The holder of the certificate cannot, after the entry upon which the paper was issued has been cancelled, maintain an action of ejectment. 2 Neb. 453.

**SEC. 414.** Judgment of a state court duly authenticated as prescribed by act of congress is conclusive upon merits or subject matter. But want of jurisdiction, release, payment, limitation by statute, common law prescription or fraud is a good plea to an action brought on such judgment. 6 Neb. 428.

ernment, purporting or proved to have been published under the authority thereof, or proved to be commonly admitted as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this state as presumptive evidence of such law.

**SEC. 420. [Same—Public seal—Unwritten law.]**—The public seal of the state or county affixed to a copy of a written law or other public writing, is also admissible as evidence of such law or writing respectively; the unwritten law of any other state or government may be proved as fact by parol evidence, and also by the books of reports of cases adjudged in their courts.

#### PROCEEDINGS TO PERPETUATE TESTIMONY.

**SEC. 421. [Petition.]**—The testimony of a witness may be perpetuated in the following manner: The applicant shall file in the office of the clerk of the district court, a petition, to be verified, in which shall be set forth, specially, the subject matter relative to which testimony is to be taken, and the names of the persons interested, if known to the applicant; and if not known, such general description as he can give of such persons as heirs, devisees, alienees, or otherwise. The petition shall also state the names of the witnesses to be examined, and the interrogatories to be propounded to each; that the applicant expects to be a party to an action in a court of this state, in which such testimony will, as he believes, be material; and the obstacles preventing the immediate commencement of the action, where the applicant expects to be plaintiff.

**SEC. 422. [Order for examination.]**—The court, or judge thereof, may forthwith make an order allowing the examination of such witnesses. The order shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof, and the manner in which they shall be notified.

**SEC. 423. [Cross-interrogatories.]**—When it appears satisfactorily to the court or judge that the parties interested cannot be personally notified, such court or judge shall appoint a competent attorney to examine the petition and prepare and file cross-interrogatories to those contained therein.

**SEC. 424. [Examination—Attorney's fee.]**—The witnesses shall be examined upon the interrogatories of the applicant, and upon cross-interrogatories, where they are required to be prepared, and no others shall be propounded to them; nor shall any statement be received which is not responsive to some one of them. The attorney filing the cross-interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs.

**SEC. 425. [Same—Before whom taken—Preservation.]**—Such depositions shall be taken before some one authorized by law to take depositions, or before some one specially authorized by the court or judge, and shall be returned to the clerk's office of the court in which the petition was filed.

**SEC. 426. [Same—Approval—Effect.]**—The court or judge, if satisfied that the depositions have been properly taken, and as herein required, shall approve the same and order them to be filed; and if a trial be had between the parties named in the petition, or their privies or successors in interest, such depositions, or certified copies thereof, may be given in evidence by either party, where the witnesses are dead, or insane, or where their attendance for oral examination cannot be obtained or required; but such depositions shall be subject to the same objections for irrelevancy and incompetency as may be made to depositions taken pending an action.

**SEC. 427. [Costs.]**—The applicant shall pay the costs of all proceedings under this chapter.

### TITLE XI.—JUDGMENT.

#### JUDGMENT IN GENERAL.

**SEC. 428. [Defined.]**—A judgment is the final determination of the rights of the parties in an action.

**SEC. 428.** In county court a "judgment decreed in favor of plaintiff in sum of ——— and costs ———."

**SEC. 429. [Against whom given.]**—Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; it may determine the ultimate rights of the parties on either side, as between themselves, and it may grant to the defendant any affirmative relief to which he may be entitled. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper. The court may also dismiss the petition with costs, in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served.

**SEC. 429 a. [Transcripts from other counties—Effect—Lien—Execution.]**—**SEC. 1.** That the transcript of a judgment of any district court in this state, may be filed in the office of the clerk of the district court in any county, and such transcript shall be a lien on the property of the debtor in any county in which such transcript is filed, in like manner as in the county where such judgment was rendered, and execution may be issued on judgment obtained by such transcript, as on the original judgment; *Provided*, That such transcript shall at all times be effected and be in the same plight as the original judgment. [1869, 158, G. S. 712.]

**SEC. 429 b. [Decree for conveyance—Effect.]**—**SEC. 1.** When any judgment or decree shall be rendered for a conveyance, release or acquittance, in any court of this state, and the party or parties against whom the judgment or decree shall be rendered, do not comply therewith within the time mentioned in said judgment or decree, such judgment or decree shall have the same operation and effect, and be as available as if the conveyance, release, or acquittance had been executed conformable to such judgment or decree. [1869, 70, G. S. 711.]

**SEC. 430. [Action dismissed without prejudice.]**—An action may be dismissed without prejudice to a future action. *First.* By the plaintiff, before the final submission of the case to the jury, or to the court, where the trial is by the court. *Second.* By the court, where the plaintiff fails to appear on the trial. *Third.* By the court, for want of necessary parties. *Fourth.* By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence. *Fifth.* By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action. In all other cases, upon the trial of the action, the decision must be upon the merits.

**SEC. 430 a. [Plaintiff may dismiss in vacation.]**—**SEC. 1.** That the party, plaintiff, in any case pending in the district or supreme court of the state, shall, when no counter-claim or set-off has been filed by the opposite party, have the right in the vacation of any of said courts to dismiss his said action without prejudice, upon payment of costs, which said dismissal shall be, by the clerk of

is a sufficient judgment. 7 Neb. 479. See also 8 Neb. 467. 10 Neb. 24. Judgment conclusive unless appealed from. 6 Neb. 462.

**SEC. 429.** Several judgments may be recovered against several wrongdoers, although but one satisfaction can be had. 1 Neb. 127. If suit be brought against three parties jointly and severally liable, judgment may be had against those served. 1 Neb. 460. Rule as to judgment non obstante veredicto. 6 Neb. 305. Judgment may be void as to one defendant but good as to another. 6 Neb. 410. Judgment entered in state court, upon debt, accrued before institution of bankruptcy proceedings, prior to decree in bankruptcy, the certificate of discharge is a bar to further proceedings on the judgment. 6 Neb. 451. Judgment must conform to finding. 6 Neb. 167. Issues presented must be decided before entry of judgment. *Id.* The journal entry is indisputable evidence of what the judgment is. 9 Neb. 78. The bringing of a cause into the supreme court does not oust the district court of jurisdiction to modify its judgment during the same term at which it was rendered, pending the action in error in the supreme court. 9 Neb. 218. A party failing to plead should be defaulted, and the same entered on journal before judgment is rendered. 8 Neb. 168. But if judgment show that such party consented to the sum found due it is error without prejudice. 9 Neb. 61. Opening default, a matter of discretion. 8 Neb. 202. Presumptions are in favor of the correctness of judgments. 4 Neb. 415. 10 Neb. 185. Judgment in a case wherein court has jurisdiction, unappealed from, when no exceptions are taken, and when it does not appear affirmatively to be unsupported by the petition, is conclusive. 10 Neb. 578. See also 3 Neb. 115. Note to sec. 191.

**SEC. 429 a.** "An act to give effect to the transcripts of judgments in the several district courts." Passed and took effect Feb. 15, 1869. Laws 1869, 148.

**SEC. 429 b.** "An act giving effect to judgments and decrees," passed and took effect Feb. 12, 1869. Laws, 1869, 70.

**SEC. 430 a.** "An act for the dismissal of certain actions in vacation," passed and took effect June 12, 1867. Laws 1877, 51.

any of said courts, entered upon the journals and take effect from and after the date thereof. [1867, 51.]

**SEC. 431. [Action dismissed when set-off or counter-claim pleaded.]**—In any case where a set-off or counter-claim has been presented, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed the action or failed to appear.

**SEC. 432. [On failure to answer.]**—If the taking of an account, or the proof of a fact, or the assessment of damages, be necessary to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law, the court may, with the assent of the party not in default, take the account, hear the proof, or assess the damages; or may, with the like assent, refer the same to a referee, master, or commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury be ordered, it shall be on or after the day on which the action is set for trial.

**SEC. 433. [By confession.]**—Any person indebted, or against whom a cause of action exists, may personally appear, in a court of competent jurisdiction, and, with the assent of the creditor, or person having such cause of action, confess judgment therefor, whereupon judgment shall be entered accordingly.

**SEC. 434. [Same—Cause of action stated.]**—The debt or cause of action shall be briefly stated in the judgment, or in a writing to be filed as pleadings in other actions.

**SEC. 435. [Same—Effect.]**—Such judgment shall authorize the same proceedings for its enforcement as judgments rendered in actions regularly brought and prosecuted; and the confession shall operate as a release of errors.

**SEC. 436. [Same—By attorney.]**—Every attorney who shall confess judgment in any case, shall, at the time of making such confession, produce the warrant of attorney for making the same, to the court before which he makes the confession, and the original, or a copy of the warrant shall be filed with the clerk of the court in which the judgment shall be entered.

**SEC. 437. [Same—By person in custody.]**—If any person be in custody in a civil action, at the suit of another, no warrant of attorney executed by the person in custody, to confess judgment in favor of the person at whose suit he is in custody, shall be of any force, unless some attorney expressly named by the person in custody be present, and sign the warrant of attorney as a witness.

#### MANNER OF GIVING AND ENTERING JUDGMENT.

**SEC. 438. [Upon general verdict.]**—When a trial by jury has been had, judgment must be rendered by the clerk in conformity to the verdict, unless it is special, or the court order the case to be reserved for future argument or consideration.

**SEC. 439. [Upon special finding—Reserved case.]**—Where the verdict is special, or where there has been a special finding on particular questions of fact, or where the court has ordered the case to be reserved, it shall order what judgment shall be entered.

**SEC. 440. [Upon pleadings.]**—Where, upon the statements in the pleadings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, though a verdict has been found against such party.

**SEC. 441. [Upon set-off—Counter claim.]**—If a counter-claim or set-off established at the trial, exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, if it appear that the defendant is entitled to any affirmative relief, judgment shall be given therefor.

**SEC. 442. [Infant's rights, reserved.]**—It shall not be necessary to reserve, in a judgment or order, the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the infant, within one year after arriving at the age of twenty-one years, may show cause against such order or judgment.



**SEC. 443. [Entered on journal].**—All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action.

**SEC. 444. [Complete record].**—The clerk shall make a complete record of every cause as soon as it is finally determined, unless such record, or some part thereof, be duly waived.

**SEC. 445. [Same—When made].**—He shall make up such record in each cause, in the vacation next after the term at which the same was determined, and the presiding judge of such court shall, at its next term thereafter, subscribe the same.

**SEC. 446. [Same—Contents].**—The records shall be made up from the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court; but if the items of an account, or the copies of a paper attached to the pleadings be voluminous, the court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded.

**SEC. 447. [Records signed by judge].**—When the judicial acts or other proceedings of any court have not been regularly brought up and recorded by the clerk thereof, such court shall cause the same to be made up and recorded within such time as it may direct. When they are made up, and upon examination found to be correct, the presiding judge of such court shall subscribe the same.

**SEC. 448. [Complete record—Unnecessary when].**—No complete record shall be made: *First.* In criminal prosecutions where the indictment has been quashed, or where the prosecuting attorney shall have entered a *nolle prosequi* on the indictment. *Second.* In cases where an action has been dismissed without prejudice to a future action. *Third.* In actions in which, in open court, at the term at which the final order or judgment shall be made, both parties shall declare their agreement that no record shall be made.

**SEC. 449. [Same—Action dismissed].**—In cases where an action has been dismissed without prejudice to a future action, the clerk shall make a complete record of the proceedings, upon being paid for making the same by the party desiring the record to be made.

**SEC. 450. [Same—Set-off—Counter-claim].**—A complete record shall be made in the case mentioned in section four hundred and thirty-one, unless waived by the parties.

#### CONVEYANCE BY COMMISSIONERS.

**SEC. 451. [Realty—When conveyed].**—Real property may be conveyed by master commissioners as hereinafter provided: *First.* When, by an order or judgment in an action or proceeding, a party is ordered to convey such property to another, and he shall neglect or refuse to comply with such order or judgment. *Second.* When specific real property is required to be sold under an order or judgment of the court.

**SEC. 452. [Sheriff may act—Sales].**—A sheriff may act as a master commissioner under the second subdivision of the preceding section. Sales made under the same shall conform in all respects to the laws regulating sales of land upon execution.

**SEC. 453. [Deed, how made].**—The deed of a master commissioner shall contain the like recital, and shall be executed, acknowledged and recorded as the deed of a sheriff, of real property sold under execution.

SEC. 443. The entries in the journal are not part of the complete record. 1 Neb. 328. If an entry in the journal recite a trial and finding by the judge, and run in form as a judgment, it will not, simply because signed by a judge other than the one holding the term, be treated as a finding only. If it is a decision it is a judgment. 2 Neb. 64.

SEC. 446. Cited 2 Neb. 317.

SEC. 451. See section 429 b.

## TITLE XII.—CAUSES OF ACTION WHICH SURVIVE, AND ABATEMENT OF ACTIONS.

SEC. 454. [**Causes of action which survive.**].—In addition to the causes of action which survive at common law, causes of action for *mesne* profits, or for an injury to real or personal estate, or for any deceit or fraud, shall also survive, and the action may be brought notwithstanding the death of the person entitled or liable to the same.

SEC. 455. [**Actions which do not abate.**].—No action pending in any court shall abate by the death of either or both the parties thereto, except an action for libel, slander, malicious prosecution, assault, or assault and battery, for a nuisance, or against a justice of the peace for misconduct in office; which shall abate by the death of the defendant.

## TITLE XIII.—REVIVOR.

SEC. 456. [**Of action—Death of one of several parties.**].—Where there are several plaintiffs or defendants in an action, and one of them dies, or his powers as a personal representative cease, if the right of action survive to or against the remaining parties, the action may proceed, the death of the party, or the cessation of his powers, being stated on the record.

SEC. 457. [**Same—Action to proceed.**].—Where one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action do not admit of a survivorship, and the court is of opinion that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, it may proceed to try the same as between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of the trial.

SEC. 458. [**Revivor in name of representatives.**].—Where one of the parties to an action dies, or his powers as a personal representative cease, before the judgment, if the right of action survive in favor of or against his representatives or successor, the action may be revived, and proceed in their names.

SEC. 459. [**Order of revivor.**].—The revivor shall be by a conditional order of the court if made in term, or by a judge thereof if made in vacation, that the action be revived in the names of the representatives or successor of the party who died, or whose powers ceased, and proceed in favor of or against them.

SEC. 460. [**Same—Made upon order.**].—The order may be made on the motion of the adverse party, or of the representatives or successor of the party who died, or whose powers ceased, suggesting his death or the cessation of his powers, which, with the names and capacities of his representatives or successor, shall be stated in the order.

SEC. 461. [**Same—Service of order.**].—If the order is made by consent of the parties, the action shall forthwith stand revived; and if not made by consent, the order shall be served in the same manner, and returned within the same time, as a summons, upon the party adverse to the one making the motion, and if sufficient cause be not shown against the revivor, the action shall stand revived.

SEC. 462. [**Notice by publication.**].—When the plaintiff shall make an affidavit, that the representatives of the defendant, or any of them, in whose name the action may be ordered to be revived, are non-residents of the state, or have left the same to avoid the service of the order, or so conceal themselves that the order cannot be served upon them, or that the names and residence of the heirs or devisees of the person against whom the action may be ordered to be revived, or some of them, are unknown to the affiant, a notice may be published

SEC. 456. Judgment of revivor is merely a continuation of original action. 6 Neb. 424. 7 Neb. 265. The failure of the clerk, upon the entry of an order of revivor, to change the title of the cause, is not fatal to a judgment subsequently rendered. The mistake may be remedied after judgment. 6 Neb. 508. The order of revivor, unless vacated on error, is conclusive, and cannot be reviewed on the subsequent trial of the cause. Neb. 523. See section 472, and note to section 484.

SEC. 458. Cited 6 Neb. 521.

for four consecutive weeks, as provided by section seventy-nine, notifying them to appear on a day therein named, not less than ten days after the publication is complete, and show cause why the action should not be revived against them; and if sufficient cause be not shown to the contrary, the action shall stand revived.

**SEC. 463. [Death of plaintiff.]**—Upon the death of the plaintiff in an action, it may be revived in the names of his representatives, to whom his right has passed. Where his right has passed to his personal representative, the revivor shall be in his name; where it has passed to his heirs or devisees, who could support the action if brought anew, the revivor may be in their names.

**SEC. 464. [Death of defendant.]**—Upon the death of a defendant in an action, wherein the right, or any part thereof, survives against his personal representative, the revivor shall be against him; and it may also be against the heirs or devisees of the defendant, or both, when the right of action, or any part thereof, survives against them.

**SEC. 465. [Same—Action concerning realty.]**—Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be revived against his heirs or devisees, or both, and an order therefor may be forthwith made in the manner directed in the preceding sections of this title.

**SEC. 466. [Same—Revivor, when made.]**—An order to revive an action against the representatives or successor of a defendant, shall not be made without the consent of such representatives or successor, unless in one year from the time it could have been first made.

**SEC. 467. [Death of plaintiff—Revivor, when made.]**—An order to revive an action in the names of the representatives or successor of a plaintiff, may be made forthwith, but shall not be made without the consent of the defendant, after the expiration of one year from the time the order might have been first made; but where the defendant shall also have died, or his powers have ceased in the meantime, the order of revivor on both sides may be made in the period limited in the last section.

**SEC. 468. [Action, when stricken from docket.]**—When it appears to the court by affidavit that either party to an action has been dead, or, where a party sues or is sued as a personal representative, that his powers have ceased, for a period so long that the action cannot be revived in the names of his representatives or successor, without the consent of both parties, it shall order the action to be stricken from the docket.

**SEC. 469. [Same—Death of plaintiff.]**—At any term of the court succeeding the death of the plaintiff, while the action remains on the docket, the defendant having given to the plaintiff's proper representatives, in whose names the action might be revived, ten days notice of the application therefor, may have an order to strike the action from the docket and for costs against the estate of the plaintiff, unless the action is forthwith revived.

**SEC. 470. [Revived action, when tried.]**—When, by the provisions of the preceding sections, an action stands revived, the trial thereof shall not be postponed by reason of the revivor, if the action would have stood for trial at the term the revivor is complete, had no death or cessation of powers taken place.

#### REVIVOR AND NEW PARTIES TO JUDGMENT.

**SEC. 471. [Joint debtors.]**—When a judgment is recovered against one or more persons jointly indebted upon contract, those who were not originally summoned may be made parties to the judgment by action.

**SEC. 472. [Death of parties.]**—If either or both the parties die after judgment, and before satisfaction thereof, their representatives, real or personal, or both, as the case may require, may be made parties to the same, in the same manner as is prescribed for reviving actions before judgment; and such judgment may

SEC. 464. The right to revive is not discretionary with the court or judge. 7 Neb. 265. Court has no right to inquire into the merits of the case. 7 Neb. 266.

be rendered and execution awarded as might or ought to be given or awarded against the representatives, real or personal, or both, of such deceased party.

SEC. 473. [**Dormant judgment.**].—If a judgment become dormant, it may be revived in the same manner as is prescribed for reviving actions before judgment.

#### TITLE XIV.—EXECUTIONS.

SEC. 474. [**Issuance.**].—Executions shall be deemed process of the court, and shall be issued by the clerk and directed to the sheriff of the county. They may be directed to different counties at the same time.

SEC. 475. [**Different kinds.**].—Executions are of three kinds: *First.* Against the property of the judgment debtor. *Second.* Against his person. *Third.* For the delivery of the possession of real property with damages for withholding the same, and costs.

##### AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR.

SEC. 476. [**Property subject to levy.**].—Lands, tenements, goods and chattels, not exempt by law, shall be subject to the payment of debts, and shall be liable to be taken on execution and sold as hereinafter provided.

SEC. 477. [**Lien of judgment.**].—The lands and tenements of the debtor within the county where the judgment is entered, shall be bound for the satisfaction thereof, from the first day of the term at which judgment is rendered; but judgments by confession, and judgments rendered at the same term at which the action is commenced, shall bind such lands only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.

SEC. 478-481. [**Repealed 1875, 51.**]

SEC. 477 a. [**Stay of execution—Order of sale.**].—SEC. 1. Hereafter no stay of execution or order of sale upon any judgment or decree shall be granted for a longer time than nine months from and after the rendition of such judgment or decree. [1875, 49.]

SEC. 477 b. [**Same—Mortgaged premises.**].—SEC. 2. The order of sale on all decrees for the sale of mortgaged premises shall be stayed for the period of nine months from and after the rendition of such decree, whenever the defendant shall within twenty days after the rendition of such decree, file with the clerk of the court a written request for the same; *Provided*, That if the defendant make no such request within said twenty days, the order of sale may issue immediately after the expiration thereof.

SEC. 477 c. [**Same—Judgments.**].—SEC. 3. On all judgments for the recovery of money only, except those rendered in any court on an appeal or writ of error thereto or against any officer or person or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty, there may be a stay of execution if the defendant therein shall, within twenty days from the rendition of judgment, procure two or more sufficient freehold sureties to enter into a bond, acknowledging themselves security for the defendant for the payment of the judgment, interest, and costs, from the time of rendering

SEC. 473. No objections will be heard which seek to go behind original judgment. 10 Neb. 191. Revivor of dormant judgment should be by affidavit, and not by petition. *Id.*

SEC. 477. The lien of judgment attaches to lands subsequently acquired. 7 Neb. 396. (Overruling 1 Neb. 134.) 8 Neb. 399. But it only attaches to the interest of debtor in the land. 5 Neb. 161. 7 Neb. 171, 289. (Overruling 1 Neb. 465.) 7 Neb. 465. And see 1 Neb. 294. 7 Neb. 393. Lien attaches to homestead but cannot be enforced as long as same is occupied by debtor. 4 Neb. 502. 5 Neb. 49. But see ante p. 296.

SEC. 476 a. "An act to provide for stay of execution and orders of sale," passed and took effect Feb. 23, 1875, the last section of which repealed sections 478, 479, 480 and 481.

SEC. 477 b. On judgment foreclosing a mechanics lien the defendant is not entitled to stay on mere request, without filing a bond with security. 10 Neb. 589.

SEC. 477 c. To operate as a strictly statutory stay, the undertaking must be given within the time limited. But a stay may be effected afterwards by agreement between the parties upon a sufficient consideration. 6 Neb. 448. Under the former statute, section 481, which read that defendant "shall enter into a bond with one or more sufficient sureties," it was held that a bond executed by sureties alone was void the plaintiff not being a party to it. 7 Neb. 418. Under this section requiring two sureties, a bond was given by principal and one surety only; held that such surety was not liable. 7 Neb. 13.

judgment until paid, as follows: *First.* If the sum for which judgment was rendered, exclusive of costs, does not exceed fifty dollars, three months. *Second.* If the sum for which judgment was rendered, exclusive of costs, exceeds fifty dollars and does not exceed one hundred dollars, six months. *Third.* If the sum for which judgment was rendered, exclusive of costs, exceeds one hundred dollars, nine months.

SEC. 477 d. [**Same—Bond.**].—SEC. 4. Officers approving stay bonds shall require the affidavits of the signers of such bonds that they own real estate not exempt from execution, and aside from incumbrance, to the value of twice the amount of the judgment.

SEC. 477 e. [**Error—Appeal—Surety.**].—SEC. 5. No proceedings in error or appeal shall be allowed after such stay has been taken, nor shall a stay be taken on a judgment entered as herein contemplated, against one who is surety in the stay of execution.

SEC. 477 f. [**Bond—Effect.**].—SEC. 6. The sureties for the stay of execution may be taken and approved by the clerk, and the bond shall be recorded in a book kept for that purpose, and have the force and effect of a judgment confessed from the date thereof against the property of the sureties, and the clerk shall enter and index the same in the proper judgment docket, as in the case of other judgments.

SEC. 477 g. [**Execution recalled.**].—SEC. 7. When the surety is entered after execution issued, the clerk shall immediately notify the sheriff of the stay, and he shall forthwith return the execution, with his doings thereon.

SEC. 477 h. [**Property levied upon relinquished.**].—SEC. 8. All property levied on before stay of execution, and all written undertakings for the delivery of personal property to the sheriff, shall be relinquished by the officer upon stay of execution being entered.

SEC. 477 i. [**Expiration—Execution.**].—SEC. 9. At the expiration of the stay the clerk shall issue a joint execution against the property of all the judgment debtors and sureties, describing them as debtors or sureties therein.

SEC. 477 j. [**Effect on judgment lien.**].—SEC. 10. Where a stay of execution has been taken, such confessed judgment shall not release any judgment lien by virtue of the original judgment for the amount then due. The officer holding the execution shall return thereon what amount was made from the principal debtor, and how much from the sureties.

SEC. 482. [**Dormant judgment.**].—If execution shall not be sued out within five years from the date of any judgment that now is or may hereafter be rendered in any court of record in this state, or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor.

SEC. 488. [**Contents of writ.**].—The writ of execution against the property of the judgment debtor, issuing from any court of record in this state, shall command the officer to whom it is directed, that of the goods and chattels of the debtor he cause to be made the money specified in the writ, and for want of goods and chattels, he cause the same to be made of the lands and tenements of the debtor; and the exact amount of the debt, damages and costs, for which the judgment is entered, shall be endorsed on the execution.

SEC. 484. [**Several writs—Preference.**].—When two or more writs of execution against the same debtor shall be sued out during the term in which judgment was rendered, or within ten days thereafter, and when two or more writs of execution against the same debtor shall be delivered to the officer on the same day, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all executions, the amount made shall be distribu-

SEC. 447 a. Cited 9 Neb. 122. Under the former statute a contrary rule prevailed. 4 Neb. 555.

SEC. 482. Cited 1 Neb. 294. The lapse of five years raises the presumption of payment. 10 Neb. 192.

SEC. 484. The clause, "In all other cases the writ of execution first delivered," etc., relates to executions in the hands of the officer at the time of the sale, and not to writs returned with or without a levy. 5 Neb. 43.

ted to the several creditors in proportion to the amount of their respective demands. In all other cases, the writ of execution first delivered to the officer shall be first satisfied. And it shall be the duty of the officer to endorse on every writ of execution the time when he received the same; but nothing herein contained shall be so construed as to affect any preferable lien which one or more of the judgments on which execution issued may have on the lands of the judgment debtor.

**Sec. 485. [Levy].**—The officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall endorse on the writ of execution "no goods," and forthwith levy the writ of execution upon the lands and tenements of the debtor, which may be liable to satisfy the judgment.

**Sec. 486. [Intervening claimants—Trial right of property].**—If the officer, by virtue of any writ of execution issued from any court of record in this state, shall levy the same on any goods and chattels claimed by any person other than the defendant, it shall be the duty of said officer forthwith to give notice in writing to some justice of the peace in the county, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant; and at the same time he shall furnish the said justice of the peace with a schedule of the property claimed. And it shall be the duty of such justice of the peace immediately upon the receipt of such notice and schedule to make an entry of the same upon his docket, and issue a writ of summons, directed to the sheriff or any constable of the county, commanding him to summon five disinterested men, having the qualification of electors, who shall be named in said summons, to appear before him, the said justice, at the time and place therein mentioned, which time shall not be more than three days after the date of said writ, to try and determine the right of the claimant to the property in controversy. And it shall be the duty of the claimant to give two days notice in writing to the plaintiff or other party for whose benefit such execution was issued and levied as aforesaid, his agent or attorney, if within the county, of the time and place of such trial; and he shall, moreover, prove to the satisfaction of said justice that such notice was given, or that the same could not be given by reason of the absence of the party, his agent or attorney.

**Sec. 487. [Same—Proceedings].**—The jury summoned as aforesaid, shall be sworn to try and determine the right of the claimant to the property in controversy, and a true verdict to give, according to the evidence. If the jury shall find the right to said goods and chattels, or any part thereof, to be in the claimant, they shall also find the value thereof, and the justice shall render judgment upon such finding of the jury, for the claimant, that he recover his costs against the plaintiff in execution, or other party to the same for whose benefit the execution issued, and also that he have restitution of said goods and chattels, or any part thereof, according to the finding of the jury. But if the right of the said goods and chattels, and every part thereof, shall not be in the claimant according to the finding of said jury, then the said justice shall render judgment on such finding, in favor of the plaintiff in execution, or other party for whose benefit the same was issued and levied, against said claimant for costs, and award execution thereon. Said justice of the peace, in the taxation of costs accruing by reason of such claim and trial, shall allow each juror summoned and sworn, the sum of fifty cents; and for the sheriff, constable or other officer, and witnesses, and for himself, he shall tax such fees as are allowed by law to each respectively, for like services rendered in other cases. Such judgment for the claimant (unless an undertaking shall be executed, as provided in the next section), shall be a justifica-

**Sec. 485.** If levy is made before return day of the writ, sale may be had afterwards. The rule applies to an order of sale. 7 Neb. 226. Return of writ, without sale, is an abandonment of levy on personal property. 10 Neb. 419.

**Sec. 486.** Sheriff can institute proceedings only at instance of claimant. If jury find against claimant he cannot maintain action against sheriff, while if finding be in his favor, the plaintiff in execution may tender undertaking (sec. 488) and require sale to proceed. 5 Neb. 458. Party cannot be deprived, without his consent, of his right to a trial by jury. *Id.* See sec. 998, post and note.

tion of the officer in returning "no goods" to the writ of execution, by virtue of which the levy has been made, as to such part of the goods and chattels as were found to belong to such claimant.

**SEC. 488. [Same—Sale of property—Bond.]**—If the jury shall find the property, or any part thereof, to be in the claimant, and the plaintiff in execution shall at any time within three days after said trial, tender to the sheriff or other officer having such property in his custody on execution, an undertaking, with good and sufficient sureties payable to such claimant, in double the amount of the value of such property as assessed by the jury, to the effect that they will pay all damages sustained by reason of the detention or sale of such property, then the sheriff or other officer shall deliver said undertaking to the claimant, and proceed to sell such property, as if no such trial of the right of property had taken place, and shall not be liable to the claimant therefor.

**SEC. 489. [Goods unsold—Delivery bond.]**—In all cases where a sheriff, coroner or other officer, shall, by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, for his own security take of the defendant an undertaking with security in such sum as he may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice given in writing to said defendant in execution, or by advertisement, published in a newspaper printed in the county, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him given, or to pay to the officer holding the execution, the full value of said goods and chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, shall be considered as broken, and may be proceeded on as in other cases.

**SEC. 490. [Notice of sale—Re-sale.]**—The officer who levies upon goods and chattels, by virtue of an execution issued by a court of record, before he proceeds to sell the same, shall cause public notice to be given of the time and place of sale, for at least ten days before the day of sale. The notice shall be given by advertisement published in some newspaper printed in the county, or in case no newspaper be printed therein, by putting up advertisements in five public places in the county; two advertisements shall be put up in the precinct where the sale is to be held. And where goods and chattels levied upon cannot be sold for want of bidders, the officer making such return shall annex to the execution a true and perfect inventory of such goods and chattels; and the plaintiff in such execution may thereupon sue out another writ of execution, directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold unless the time and place of sale be advertised as hereinbefore provided.

**SEC. 491. [Same property—Several levies.]**—When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ shall at the request of the person entitled to the benefit thereof, his agent, or attorney, add thereto a command to the officer to whom such writ shall be directed, that if the property remaining in his hands not sold, shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon the lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.

**SECS. 492, 493. [Repealed 1875, 61.]**

**SEC. 491 a. [Appraisal of lands levied on.]**—**SEC. 1.** Whenever, hereafter, execution shall be levied on any lands and tenements, the officer levying

SEC. 491 a-f. "An act for the more equitable appraisement of real property under judicial sale," passed and took effect Feb. — 1875, Laws p. 60, and repealing sections 492 and 493. The act is not unconstitutional. 6 Neb. 36. It is not error for the sheriff to neglect to take steps to ascertain what liens prior to the order of sale, there were upon the land, it not being shown that any such liens in fact existed. 5 Neb. 287. An oath to "appraise the property" instead of the "interest" of the debtor is not an error for which sale will be set aside. Id. Return should show that appraisers are residents of the county. 1 Neb. 409.

the same shall call an inquest of two disinterested freeholders, who shall be residents of the county where the lands taken on execution are situated, and administer to them an oath impartially to appraise the interest of the person, or persons, or corporation against whom the execution is levied, in the property so levied upon, and such officer, together with said freeholders, shall appraise said interest at its real value in money, and such appraisement shall be signed by such officer and said freeholders, respectively. [1875, 60.]

SEC. 491 b. [**Same—How made.**].—SEC. 2. That for the purpose of the appraisement mentioned in the last preceding section, the officer and the freeholders therein named shall deduct from the real value of the lands and tenements levied on, the amount of all liens and incumbrances for taxes or otherwise, prior to the lien of the judgment under which execution is levied, and to be determined as hereinafter provided, and which liens and incumbrances shall be specifically enumerated, and the sum thereafter remaining shall be the real value of the interest therein of the person, or persons, or corporation against whom or which the execution is levied,

SEC. 491 c. [**Same—Certificates of incumbrances.**].—SEC. 3. It shall be the duty of the county clerk, the clerk of the district court, and the county treasurer of the county wherein such levy is made, for the purpose of ascertaining the amount of the liens and incumbrances upon the lands and tenements so levied upon, on application of the sheriff in writing, holding such execution, to certify to said sheriff under their respective hands and official seals, the amount and character of all liens existing against the lands and tenements levied on, and which are prior to the lien of such levy, as the said liens appear of record in their respective offices. For which certificate and the necessary search therefor, said officer shall receive a fee of two dollars (\$2.00) each, to be paid by the plaintiff in the execution, and taxed as increased costs in the action in which the judgment on which execution was issued was rendered.

SEC. 491 d. [**Same—Lands, how and when sold.**].—SEC. 4. The officer holding such appraisement shall forthwith deposit a copy thereof, including his application to the officers enumerated in section three of this act, and their official certificates as in said section provided, in the office of the clerk of the court from which such execution issued, and shall immediately advertise and sell said real estate, lands, and tenements agreeably to the provisions of this act, but in no case shall he sell any such real estate, lands, or tenements for less than two-thirds the appraised value of the interest of the person, persons, or corporation, against whom the execution was issued, unless it appear from the appraisement under this act that the liens and incumbrances thereon equal or exceed its real value in money.

SEC. 491 e. SEC. 5. [**Repealed section 492 and 493.**]

SEC. 491 f. [**Construction.**].—SEC. 6. This act shall take effect and be in force from and after its passage, but shall not apply to executions which shall issue upon judgments already entered.

SEC. 494. [**Same—Lands sold by state.**].—Nothing contained in this and the preceding sections of this title shall in anywise extend to affect the sale of any land by the state, but all lands therein, the property of individuals indebted to the state for any debt or taxes, or in any other manner, shall be sold without valuation, for the discharge of such debt or taxes, agreeably to the laws for such cases made and provided.

SEC. 495. [**New appraisement.**].—In all cases where real estate may here-

SEC. 491 b. Appraisers act judicially. Tax deeds are not liens. 8 Neb. 9. Liens must be deducted. It is not sufficient to appraise "the interest" of the debtor. 10 Neb. 422. Premises were appraised at \$2500, but by erroneous valuation of liens, defendant's interest was only valued at \$143.77. Property sold for \$1675, held, that the consideration of such erroneous liens by appraisers was error without prejudice. 8 Neb. 481.

SEC. 491 c. These officers do not exercise judicial powers. 8 Neb. 481.

SEC. 491 d. If record is silent presumption is that sheriff deposited copy of appraisement as required. 5 Neb. 259. 9 Neb. 255. Each lot or parcel of ground should be appraised and sold separately. 1 Neb. 409. But a homestead consisting of different parcels taken from distinct lots adjoining each other, may be sold as one tract. 5 Neb. 49.



after be levied upon, by virtue of any execution or order of sale, and shall have been appraised, and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the officer to cause a new appraisement of such real estate to be made, and successive executions or orders of sale may issue at any time in vacation, after the return of the officer "not sold for want of bidders," at the request of the plaintiff or his attorney.

**SEC. 496. [Delinquent officers' property levied upon].**—If the property of any clerk, sheriff, coroner, justice of the peace, constable, or any collector of state, county, town, or township tax, shall be levied on, for or on account of any moneys that now are, or may hereafter be, by them collected or received in their official capacity, the property so levied on shall be sold without valuation.

**SEC. 497. [Sale of lands—Notice].**—Lands and tenements, taken in execution, shall not be sold until the officer cause public notice of the time and place of sale [to] be given, for at least thirty days before the day of sale, by advertisement in some newspaper printed in the county, or, in case no newspaper be printed in the county, in some newspaper in general circulation therein, and by putting up an advertisement on the court house door, and in five other public places in the county, two of which shall be in the precinct where such lands and tenements lie. All sales made without such advertisement shall be set aside, on motion, by the court to which the execution is returnable.

**SEC. 497 a. [Redemption of land from levy and sale].**—**SEC. 1.** The owners of any real estate against which a decree of foreclosure has been rendered in any court of record, or any real estate levied upon to satisfy any judgment or decree of any kind, may redeem the same from the lien of such decree or levy at any time before the sale of the same shall be confirmed by a court of competent jurisdiction by paying into court the amount of such decree or judgment, together with all interests and costs; and in case the said real estate has been sold to any person not a party plaintiff to the suit, the person so redeeming the same shall pay to said purchaser twelve per cent. interest on the amount of the purchase price from the date of sale to the date of redemption, or deposit the same with the clerk of the court where the decree or judgment was rendered. [1875, 57.]

**SEC. 498. [Confirmation of sale].**—If the court upon the return of any writ of execution or order of sale for the satisfaction of which any lands and tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has in all respects been made in conformity to the provisions of this title, the court shall direct the clerk to make an entry on the journal that the court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed of such lands and tenements; and the officer on making such sale may retain the purchase money in his hands until the court shall have examined his proceedings as aforesaid, when he shall pay the same to the person entitled thereto, agreeable to the order of the court; *Provided*, That the judge of any district court may confirm any such sale at any time after such officer has made his return, on motion and ten days notice to the adverse party or his attorney of record, if made in vacation. When any sale is confirmed in vaca-

**SEC. 497.** If advertisement is given in newspaper printed in the county, it is not necessary to post notices. 7 Neb. 459. 9 Neb. 482.

**SEC. 497 a.** "An act providing for the redemption of real estate from decree and judgment liens," passed and took effect Feb. 25, 1875. Laws 1875, 57. Cited 4 Neb. 404.

**SEC. 498.** The amendment consists in the addition of the words "or order of sale" in second line and the proviso. Order confirming sale cannot be attacked collaterally. 1 Neb. 322. 2 Neb. 156. Nor can an order setting sale aside on the ground that judgment was not a lien. 8 Neb. 398. Power and duty of court relative to judicial sales. 8 Neb. 197. 4 Neb. 538. 7 Neb. 458. 8 Neb. 398. Caveat emptor. 1 Neb. 292. 4 Neb. 535. Purchaser acquires no rights if efficient supersedeas bond is on file. 8 Neb. 306. 10 Neb. 133. Title of purchaser depends on sale being finally confirmed. 8 Neb. 239. 10 Neb. 134. Sales held good under a particular state of facts. 8 Neb. 421. 9 Neb. 94. Sales set aside under a particular state of facts. 4 Neb. 404, 531. 8 Neb. 302. Motion to set aside sale should point out specifically the errors complained of. 7 Neb. 226. If overruled, should be excepted to. 7 Neb. 459. Conspiracy to prevent competition not established by affidavits containing mere hearsay statements. 5 Neb. 260. Court may confirm or set aside sale, but has no authority to modify its terms. 9 Neb. 167. Interest on money ordered refunded to purchaser at a sale subsequently set aside, allowed. 10. Neb. 137. On appeal from an order of confirmation, supreme court will not examine merits of original case 9 Neb. 499. See also *State Bank v. Green*, 11 Neb.

tion, the judge confirming the same shall cause his order to be entered on the journal by the clerk. [Amended 1875, 38. Took effect Feb. 25, 1875.]

**SEC. 499. [Deed to purchaser.]**—The sheriff or other officer, who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser or purchasers thereof, as good and sufficient a deed of conveyance of lands and tenements sold as the person or persons against whom such writ or writs of execution were issued could have made of the same, at the time they became liable to the judgment, or at any time thereafter.

**SEC. 500. [Same—Estate conveyed.]**—The deed shall be sufficient evidence of the legality of such sale and the proceedings therein until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned as was vested in the party, at or after the time when such lands and tenements became liable to the satisfaction of the judgment. And such deed of conveyance, to be made by the sheriff or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount, and date of term of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid; and shall be executed, acknowledged, and recorded as is or may be provided by law, to perfect the conveyance of real estate in other cases.

**SEC. 501. [Fees of officers—When paid.]**—The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ or execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice.

**SEC. 502. [Same.]**—Before any officer shall be excused from giving the notification mentioned in the last section, he shall demand of the party for whose benefit the execution was issued, his agent or attorney, (provided either of them resides in the county), the fees in said section specified.

**SEC. 503. [Sale, where held.]**—All sales of lands or tenements under execution shall be held at the court house, if there be one in the county in which such lands and tenements are situated, and if there be no court house, then at the door of the house in which the district court was last held. No sheriff or other officer making the sale of property, either personal or real, or any appraiser of such property shall, either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void.

**SEC. 504. [Other writs.]**—If lands and tenements levied on as aforesaid are not sold upon one execution, other executions may be issued to sell the lands so levied upon.

**SEC. 505. [Several writs, how served.]**—In all cases when two or more executions shall be put into the hands of any sheriff or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors in whose favor one or more of said executions is issued, shall require the sheriff, or other officer, to make a separate levy to satisfy his execution or executions, it shall be the duty of the sheriff, or other officer, to levy said executions, or so many thereof as may be required, on separate parcels of real property of the judgment debtor or debtors, giving to the officer making the levy on behalf of the creditor, whose execution may, by the provisions of this chapter,

**SEC. 499.** Successor of sheriff may make deed. 1 Neb. 322.

**SEC. 500.** The purchaser is vested with all rights of judgment debtor, but that right is subject to all liens prior to the lien of the judgment on which sale is made. 5 Neb. 45. Purchaser is protected to same extent as at private sale from claims of third persons previously acquired from debtor of which he had no notice. 5 Neb. 160. Purchaser takes land subject to unpaid taxes and assessments. 5 Neb. 239. 8 Neb. 336. An agent purchased land in his own name and conveyed same to his principal. Before deed was recorded judgment was recovered against agent, and execution issued. Before sale, however, deed was put on record. Held purchaser acquired no title to the land. 8 Neb. 435. And see 1 Neb. 295.

**SEC. 503.** Purchaser may be compelled to complete his purchase. 1 Neb. 322. If he refuse to comply with his bid, officer may bring action for purchase money or at once re-sell property, but he cannot wait until sale is closed and bidders have departed before again offering property for sale. 9 Neb. 256

be entitled to a preference, the choice of such part of the real property of the judgment debtor or debtors, as will be sufficient, at two-thirds of the appraised value, to satisfy the same. And in all cases where two or more executions, which are entitled to no preference over each other, are put into the hands of the same officer, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when, in the opinion of the appraisers, the same may be divided without material injury; and if the real property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on to satisfy each execution as will bear the same proportion in value to the whole as the amount due on the execution bears to the amount of all the executions chargeable thereon, as near as may be, according to the appraised value of each separate parcel of said real property.

**SEC. 506. [Deed by sheriff's successor.]**—If the term of service of the sheriff, or other officer, who has made or shall hereafter make sale of any lands and tenements, shall expire, or if the sheriff or other officer shall be absent, or be rendered unable, by death or otherwise, to make a deed of conveyance of the same, any succeeding sheriff, or other officer, on receiving a certificate from the court from which the execution issued, for the sale of said lands and tenements, signed by the clerk, by order of said court, setting forth that sufficient proof has been made to the court that such sale was fairly and legally made, and, on tender of the purchase money, or if the same or any part thereof be paid, then, on proof of such payment and tender of the balance, if any, may execute to the said purchaser or purchasers, or his or their legal representatives, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law, and have the same effect, as if the sheriff or other officer who made sale had executed the same.

**SEC. 507. [Proceeds of sale—Disposition.]**—If, on any sale made as aforesaid, there shall be in the hands of the sheriff, or other officer, more money than is sufficient to satisfy the writ or writs, of execution, with interest and costs, the sheriff or other officer shall, on demand, pay the balance to the defendant in execution, or his legal representatives.

**SEC. 508. [Reversal of judgment—Title of purchaser.]**—If any judgment or judgments, in satisfaction of which any lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but, in such case, restitution shall be made by the judgment creditor, of the moneys for which such lands or tenements were sold, with lawful interest from the day of sale.

**SEC. 509. [Lien lost if execution not issued.]**—No judgment heretofore rendered, or which hereafter may be rendered, on which execution shall not have been taken out and levied before the expiration of five years next after its rendition, shall operate as a lien upon the estate of any debtor, to the preference of any other *bona fide* judgment creditor; but in all cases where judgment has been or may be rendered in the supreme court, and a special mandate awarded to the district court to carry the same into execution, the lien of the judgment creditor shall continue for five years after the first day of the next term of the district court, to which such mandate may be directed. Nothing in this section contained shall be construed to defeat the lien of any judgment creditor, who shall fail to take out execution and cause a levy to be made as herein provided, when such failure shall be occasioned by appeal, proceedings in error, injunction, or by a vacancy in the office of sheriff and coroner, or the inability of such

SEC. 507. Cited 5 Neb. 45.

SEC. 508. If plaintiff becomes purchaser, and conveys to a third party, and judgment is reversed grantee retains property. 1 Neb. 240. See note to section 498.

SEC. 509. The original section provided that the judgment should lose preference over other judgments if execution was not taken out and levied before the expiration of "one" year next after its rendition. The amendment includes all judgments, whether prior or subsequent to its passage. 5 Neb. 46. If execution is not taken out within the time limited, the lien is gone so far as other *bona fide* judgment creditors are concerned. 1 Neb. 294.

officer, until one year after such disability shall be removed. In all cases where real estate has been or may hereafter be taken on execution, and appraisal, [appraised] and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the court from which such execution issued, on application of the plaintiff to set aside such appraisal and order a new one to be made, or to set aside such levy and appraisal and award a new execution to issue, as the case may require. [Amended to take effect Feb. 27, 1873. G. S. 618.]

**SEC. 510. [Return of writ.]**—The sheriff or other officer, to whom any writ of execution shall be directed, shall return such writ to the court to which the same is returnable, within sixty days from the date thereof.

**SEC. 511. [Judgment against principal and surety—How rendered.]**—In all cases where judgment is rendered in any court of record within this state, upon any other instrument of writing, in which two or more persons are jointly and severally bound, and it shall be made to appear to the court, by parol or other testimony, that one or more of said persons so bound signed the same as surety or bail for his or their co-defendant, it shall be the duty of the clerk of said court, in recording the judgment thereon, to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the court aforesaid shall issue execution on such judgment, commanding the sheriff or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor, but for want of sufficient property of the principal debtor to make the same, that he cause the same to be made of the goods and chattels, lands and tenements, of the surety or bail. In all cases the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

**SEC. 512. [Appraisers—Fees—Refusal to serve.]**—Each freeholder, summoned to appraise real estate under the provisions of this chapter, shall be allowed and receive for his services the sum of fifty cents, for each day he may be so engaged as such appraiser, to be collected on the execution, by virtue of which the property appraised was levied on, if claimed at the time of making the return of such appraisal. And when any freeholder, summoned as aforesaid, shall fail to appear at the time and place appointed by the officer, and discharge his duty as appraiser, he shall, on complaint being made to any justice of the peace of the precinct in which such freeholder resides, forfeit and pay the sum of fifty cents for every such neglect, unless he can render a reasonable excuse. Such sum shall be collected by said justice, and paid into the county treasury for the use of the county.

**SEC. 513. [Sheriff—Neglect of duty.]**—If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed, which has come to his hands; or shall neglect or refuse to sell any goods and chattels, lands, and tenements; or shall neglect to call an inquest and return a copy thereof forthwith to the clerk's office; or shall neglect to return any writ of execution to the proper court, on or before the return day thereof; or shall neglect to return a just and perfect inventory of all and singular the goods and chattels by him taken in execution, unless the said sheriff or other officer shall return, that he has levied and made the amount of the debt, damages and costs; or shall refuse or neglect on demand to pay over to the plaintiff, his agent, or attorney of record, all moneys by him collected or received, for the use of said party, at any time after collecting or receiving the same, except as provided in section four hundred and ninety-eight; or shall neglect or refuse, on demand made by the defendant, his agent, or attorney of record, to pay over all moneys by him received for any sale made, beyond what is sufficient to satisfy the writ or writs of execution, with interest and legal costs, such sheriff or other officer shall, on motion in court and two days notice

thereof in writing, be amerced in the amount of said debt, damages and costs, with ten per centum thereon, to and for the use of said plaintiff or defendant, as the case may be.

**SEC. 514. [Clerk—Neglect of duty—Amercement.]**—If any clerk of a court shall neglect or refuse, on demand made by the person entitled thereto, his agent or attorney of record, to pay over all money by him received, in his official capacity, for the use of such person, every such clerk may be amerced; and the proceedings against him and his sureties shall be the same as provided for in the foregoing section against sheriffs and their sureties.

**SEC. 515. [Amercement—Amount.]**—When the cause of amercement is for refusing to pay over money collected as aforesaid, the said sheriff or other officer shall not be amerced in a greater sum than the amount so withheld, with ten per centum thereon.

**SEC. 516. [Execution to another county—Return by mail.]**—When execution shall be issued in any county in this state, and directed to the sheriff or coroner of another county, it shall be lawful for such sheriff or coroner having the execution, after having discharged all the duties required of him by law, to inclose such execution, by mail, to the clerk of the court who issued the same. On proof being made by such sheriff or coroner that the execution was mailed soon enough to have reached the office where it was issued within the time prescribed by law, the sheriff or coroner shall not be liable for any amercement or penalty, if it do not reach the office in due time.

**SEC. 517. [Money made—How returned by mail.]**—No sheriff shall forward by mail any money made on any such execution, unless he shall be specially instructed to do it by the plaintiff, his agent or attorney of record. In all cases of a motion to amerce a sheriff or other officer of any county other than the one from which the execution issued, notice in writing shall be given to such officer, as hereinbefore required, by leaving it with him, or at his office, at least fifteen days before the first day of the term at which such motion shall be made, or by transmitting the notice by mail at least sixty days prior to the first day of the term at which such motion shall be made. All amercements, so procured, shall be entered on the record of the court, and shall have the same force and effect as a judgment.

**SEC. 518. [Surety of officers—Party to amercement.]**—Each and every surety of any sheriff or other officer may be made a party to the judgment as rendered as aforesaid, against the sheriff or other officer, by action, to be commenced and prosecuted as in other cases. But the goods and chattels, lands and tenements of any such surety shall not be liable to be taken on execution, when sufficient goods and chattels, lands and tenements of the sheriff or other officer, against whom execution may be issued, can be found to satisfy the same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer by attachment, at his election.

**SEC. 519. [Same—Benefit of uncollected judgment.]**—In cases where a sheriff or other officer may be amerced, and shall not have collected the amount of the original judgment, he shall be permitted to sue out an execution, and collect the amount of said judgment in the name of the original plaintiff, for his own use.

#### EXEMPTIONS.

**SEC. 520. [Repealed 1875, 88.]**

**SEC. 521. [Personal property of head of family.]**—All heads of families, who have neither lands, town lots or houses subject to exemption as a homestead, under the laws of this state, shall have exempt from forced sale on execution the sum of five hundred dollars in personal property.

**SEC. 522. [Same—How obtained.]**—Any person desiring to avail himself

SEC. 521. Resident alien is entitled to benefits of section. 2 Neb. 9. Partnership property not exempt. 3 Neb. 261. 7 Neb. 136. 9 Neb. 45. One residing upon lands owned as a homestead cannot receive benefit of this section. 7 Neb. 184. This exemption is in addition to that allowed in sec. 530. 10 Neb. 434.  
SEC. 522. When inventory is filed under oath, officer must act. He has no discretion. 2 Neb. 9. 6 Neb. 92.

of the exemption as provided for in the preceding section, must file an inventory, under oath, in the court where the judgment is obtained, or with the officer holding the execution, of the whole of the personal property owned by him or them, at any time before the sale of the property; and it shall be the duty of the officer to whom the execution is directed, to call to his assistance three disinterested freeholders of the county where the property may be, who, after being duly sworn by said officer, shall appraise said property at its cash value.

SEC. 523. [Same.]—Upon such inventory and appraisement being completed, the defendant in execution, or his authorized agent, may select from such inventory an amount of such property, not exceeding, according to such appraisal, the amount or value herein exempted, but if neither such defendant, nor his agent shall appear and make such selection, the officer shall make the same for him.

SEC. 524. [From taxation.]—Nothing in this subdivision shall be considered as exempting any real or personal property from levy and sale for taxes.

SEC. 525-528.\* [Repealed 1875, 48.]

SEC. 529. [Same.]—Nothing in this subdivision shall be considered as exempting any real estate from taxation or sale for taxes.

SEC. 530. [Articles of personalty.]—No property hereinafter mentioned shall be liable to attachment, execution, or sale, on any final process issued from any court in this state, against any person being a resident of this state and the head of a family. *First.* The family bible. *Second.* Family pictures, school books, and library for the use of the family. *Third.* A seat or pew in any house or place of public worship. *Fourth.* A lot in any burial ground. *Fifth.* All necessary wearing apparel of the debtor and his family. All beds, bedsteads, and bedding necessary for the use of such family. All stoves and appendages put up or kept for the use of the debtor and his family, not to exceed four. All cooking utensils, and all other household furniture not herein enumerated, to be selected by the debtor, not exceeding in value one hundred dollars. *Sixth.* One sow three hogs, and all pigs under six months old and if the debtor be at the time actually engaged in the business of agriculture, in addition to the above, one yoke of oxen, or a pair of horses in lieu thereof; ten sheep, and the wool therefrom, either in the raw material or manufactured into yarn or cloth; the necessary food for the stock mentioned in this section, for the period of three months; one wagon, cart or dray, two plows and one drag; the necessary gearing for the team herein exempted; and other farming implements not exceeding fifty dollars in value. *Seventh.* The provisions for the debtor and his family necessary for six months support, either provided or growing, or both, and fuel necessary for six months. *Eighth.* The tools and instruments of any mechanic, miner or other person used and kept for the purpose of carrying on his trade or business. The library and implements of any professional man. All of which articles hereinbefore intended to be exempt, shall be chosen by the debtor, his agent, clerk or legal representative, as the case may be.

SEC. 531. [Wages—Money due from attorney.]—Nothing in this chapter shall be so construed as to exempt any property in this state from execution or attachment for clerks', laborers', or mechanics' wages, or for money due and owing by any attorney at law, for money or other valuable consideration received by said attorney for any person or persons. [Amended 1869, 67. Took effect Feb. 12, 1869. G. S. 618.]

SEC. 531 a. [Same—Mechanic's wages.]—The wages of laborers, mechanics, and clerks who are heads of families in the hands of those by whom such laborers, mechanics, or clerks may be employed, both before and after such wages shall be due, shall be exempt from the operation of attachment, execution, and garnishee process; *Provided,* That not more than sixty days wages shall

\*Homestead exemption. See chap. 36, ante p. 295.

SEC. 530. These exemptions in addition to others. 7 Neb. 186. 10 Neb. 434. A "team" of mules is exempt. 6 Neb. 92. If husband abscond, wife has the benefit. 10 Neb. 117.

SEC. 531 a. "An act to exempt laborers', mechanics' and clerks' wages in the hands of employers, from execution, attachment and garnishee process." 1869, 170, as amended Feb. 25, 1873. G. S. 715.

be exempt; *Provided further*, That nothing in this act shall be so construed as to protect the wages of persons who have or are about to abscond or leave the state from the provisions of law now in force upon that subject; *Provided further*, That nothing in this act shall be so construed as to permit the attachment of sixty days' wages in the hands of the employer. [G. S. 715]

PROCEEDINGS IN AID OF EXECUTION.

SEC. 532. [Interests of debtor subjected.]—Where a judgment debtor has not personal or real property subject to levy on execution, sufficient to satisfy the judgment, any interest which he may have in any banking, turnpike, bridge or other joint stock company, or any interest he may have in any money, contracts, claims, or choses in action, due or to become due to him, or in any judgment or decree, or any money, goods or effects which he may have in possession of any person, body-politic or corporate, shall be subject to the payment of such judgment by proceedings in equity, or as in this chapter prescribed.

SEC. 533. [Order to disclose property.]—When an execution against the property of a judgment debtor, or one of several debtors in the same judgment, is issued to the sheriff of a county where he resides, or, if he do not reside in the state, to the sheriff of the county where the judgment was rendered, or a transcript of a justice's judgment has been filed, is returned unsatisfied in whole or in part, the judgment creditor is entitled to an order from a probate judge or a judge of the district court of the county to which the execution was issued, requiring such debtor to appear and answer concerning his property, before such judge, or referee appointed by such judge, at a time and place specified in such order, within the county to which the execution was issued.

SEC. 534. [Same—How obtained.]—After the issuing of an execution against property, and upon proof by affidavit of the judgment creditor or otherwise, to the satisfaction of the district court, or a judge thereof, or a probate judge of the county in which the order may be served, that the judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by order, require the judgment creditor to appear at a time and place in said county to answer concerning the same. And such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are prescribed in this chapter.

SEC. 535. [Same—Arrest of debtor.]—Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the judge may, upon proof to his satisfaction, by affidavit of the party, or otherwise, that there is danger of the debtor leaving the state or concealing himself to avoid the examination herein mentioned, issue a warrant, requiring the sheriff to arrest him and bring him before such judge within the county in which the debtor may be arrested. Such warrant can be issued only by a probate judge or a judge of the district court of the county in which such debtor resides or may be arrested. Upon being brought before the judge, he shall be examined on oath, and other witnesses may be examined on either side, and if on such examination it appear that there is danger of the debtor leaving the state, and that he has property which he unjustly refuses to apply to such judgment, he may be ordered to enter into an undertaking, in such sum as the judge may prescribe, with one or more sureties, that he will from time to time attend for examination before the judge or referee, as shall be directed. In default of entering into such undertaking, he may be committed to the jail of the county by warrant of the judge, as for a contempt.

SEC. 536. [Criminating answers.]—No person shall, on examination pursuant to this chapter, be excused from answering any question on the ground that his examination will tend to convict him of a fraud, but his answer shall not be used as evidence against him in a prosecution for such fraud.

SEC. 537. [Payment by debtor's debtor.]—After the issuing of execution against property, any person indebted to the judgment debtor may pay to the

sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment creditor on the execution.

SEC. 538. [**Examination of debtor's debtor.**].—After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear, at a specified time and place, within the county in which such person or corporation may be served with the order to answer, and answer concerning the same. The judge may also, in his discretion, require notice of such proceeding to be given to any party in the action, in such manner as may seem to him proper.

SEC. 539. [**Same—Witnesses.**].—Witnesses may be required, upon the order of the judge, or by a subpoena issued by the clerk of the district court, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue.

SEC. 540. [**Same.**].—The party or witness may be required to attend before the judge, or before a referee appointed by the court or judge. If before a referee, the examination must be taken by the referee, and certified by the judge. All examinations and answers before a judge or referee under this chapter, must be on oath, but when a corporation answers, the answer must be on the oath of an officer thereof.

SEC. 541. [**Same.—Application of property.**].—The judge may order any property of the judgment debtor not exempt by law, in the hands of either himself or any other person or corporation, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; but the earnings of the debtor for his personal services, at any time within three months next preceding the order, cannot be so applied, where it is made to appear, by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

SEC. 542. [**Receiver.**].—The judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, in the same manner, and with the like authority as if the appointment was made by the court. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, and any interference therewith.

SEC. 543. [**Same—Undertaking—Oath.**].—If the sheriff shall be appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as such receiver; if any other person shall be appointed receiver, he shall give a written undertaking in such sum as shall be prescribed by the judge, with one or more sureties, to the effect that he will faithfully discharge his duties of receiver, and he shall also take an oath to the same effect before acting as such receiver. The undertaking mentioned in this section shall be to the state of Nebraska, and actions may be prosecuted for a breach thereof, by any person interested, in the same manner as upon a sheriff's official bond.

SEC. 544. [**Proceedings—Continuance.**].—The judge or referee, acting under the provisions of this chapter, shall have power to continue his proceedings from time to time until they are completed.

SEC. 545. [**Reference.**].—The judge may, in his discretion, order a reference to a referee agreed upon or appointed by him, to report the evidence of facts.

SEC. 546. [**Disobedience of order.**].—If any person, party or witness, disobey an order of the judge, or referee, duly served, such person, party, or witness may be punished by the judge as for contempt; and if a party he shall be committed to the jail of the county, wherein the proceedings are pending, until he



shall comply with such order; or, in case he has, since the service of such order upon him, rendered it impossible for him to comply therewith, until he has restored to the opposite party what such party has lost by such disobedience, or until discharged by due course of law. [Amended 1875, 39. Took effect Feb. 4, 1875.]

SEC. 547. [**Orders—Service—Filing, etc.**].—The orders to judgment debtors and witnesses, provided for in this chapter, shall be in writing and signed by the judge making the same, and shall be served as a summons in other cases. The judge shall reduce all his orders to writing, which, together with a minute of his proceedings, signed by himself, shall be filed with the clerk of the court of the county in which the judgment is rendered, or the transcript of the justice filed, and the clerk shall enter on his execution docket the time of filing the same.

SEC. 548. [**Fees.**].—The judge shall allow to clerks, sheriffs, referees, receivers and witnesses, such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and shall enforce by order the collection thereof from such party or parties as ought to pay the same.

SEC. 549. [**Same.**].—The probate judge shall be allowed for his services, under this chapter, the sum of three dollars in each case, and such fees as are allowed by law to clerks of the district court for similar services.

#### EXECUTIONS AGAINST THE PERSON.

SEC. 550. [**Command of writ.**].—An execution against the person of a judgment debtor, shall require the officer to arrest such debtor and commit him to the jail of the county until he pay the judgment, or be discharged according to law.

SEC. 551. [**Causes for issuance.**].—An execution against the person of the debtor may be issued upon any judgment for the payment of money. *First.* When the judgment debtor has removed, or begun to remove any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment. *Second.* When he has property, rights in action, evidences of debt, or some interest or stock in some corporation or company, which he fraudulently conceals with like intent. *Third.* When he has assigned or disposed of all, or any part of his property, or rights in action, or has converted the same into money, with intent to defraud his creditors, or with the intent to prevent such property from being taken in execution. *Fourth.* When he fraudulently contracted the debt, or incurred the obligation upon which the judgment was rendered. *Fifth.* When he was arrested on an order before judgment, and has not been discharged as an insolvent debtor, or the order has not been set aside as improperly made.

SEC. 552. [**Allowance.**].—An execution against the person of the debtor can be issued only when the same is allowed by the supreme court, district court, or probate court, or any judge of either, upon being satisfied, by the affidavit of the judgment creditor, or his attorney, and such other evidence as may be presented, of the existence of one or more of the particulars mentioned in the last preceding section.

SEC. 553. [**Same—By justice of peace.**].—A justice of the peace may issue an execution against the person of a judgment debtor, upon being satisfied of the existence of one or more of the same particulars, by the like affidavit and evidence.

SEC. 554. [**Issued of course—When.**].—In all cases in which the judgment debtor was arrested before judgment, and where the order for such arrest has not been adjudged improper, an execution against the person of such judgment debtor may issue of course.

SEC. 555. [**Discharge from arrest—Delivery of property.**].—Any person taken in execution as aforesaid, shall be discharged by delivering or setting off to the officer serving the same, if issued from a court of record, real or personal property, if issued from a justice of the peace, personal property only, sufficient to satisfy the judgment and costs for which the writ issued.

SEC. 556. [**Death of debtor.**].—The death of a person under arrest in an action does not satisfy the judgment, but an execution may issue thereon, as if the arrest had been made.

SEC. 557. [**Discharge.**].—If a person imprisoned under an order of arrest made before judgment, is not charged in execution within ten days after judgment, he shall be discharged from such imprisonment.

SEC. 558. [**Same.**].—In cases of commitment under this chapter, or upon arrest before or after judgment in civil cases, the person imprisoned, in case of his inability to perform the act or endure the imprisonment may be discharged from imprisonment by the court or judge committing him, or the court or judge thereof in which the judgment was or might be rendered, on such terms as may be just.

#### EXECUTIONS FOR THE DELIVERY OF REAL PROPERTY.

SEC. 559. [**Contents of writ.**].—If the execution be for the delivery of the possession of real property, it shall require the officer to deliver the same, particularly describing the property, to the party entitled thereto, and may at the same time require the officer to satisfy any costs or damages recovered in the same judgment, out of the goods and chattels of the party against whom it was rendered, and for want of such goods and chattels, then out of the lands and tenements, and in this respect it shall be deemed an execution against the property.

SEC. 560. [**Judgment enforced by attachment.**].—When the judgment is not for the recovery of money or real property, the same may be enforced by attachment, by the court rendering the judgment, upon motion made, or by a rule of the court upon the defendant; but in either case, notice of the motion, or a service of a copy of the rule shall be made on the defendant a reasonable time before the order of attachment is made.

#### JUDGMENTS OF A JUSTICE OF THE PEACE.

SEC. 561. [**Transcript filed in district court clerk's office.**].—In all cases in which judgment shall be rendered by a justice of the peace, the party in whose favor the judgment shall be rendered may file a transcript of such judgment in the office of the clerk of the district court of the county in which the judgment was rendered, and thereupon the clerk shall on the day on which the same shall be filed, enter the case on the execution docket, together with the amount of the judgment, and the time of filing the transcript.

SEC. 562. [**Same—Lien.**].—Such judgment, if the transcript shall be filed in term time, shall have a lien on the real estate of the judgment debtor from the day of the filing; if filed in vacation, as against the judgment debtor, said judgment shall have a lien from the day of the filing, and as against subsequent judgment creditors from the first day of the next succeeding term, in the same manner, and to the same extent as if the judgment had been rendered in the district court.

SEC. 563. [**Execution upon.**].—Execution may be issued thereon to the sheriff by the clerk of the court, in the same manner as if the judgment had been taken in court, and the sheriff shall execute and return the same as other executions; and in case of sale of real estate, his proceedings shall be examined and approved by the court, as in other cases.

SEC. 564. [**Certificate of justice—Costs.**].—The justice of the peace shall certify on the transcript the amount, if any, paid on such judgment. The costs of the transcript, the filing of the same and the entry of the case on the execution docket, shall be paid by the party filing the same, and not be taxed to the other party.

#### TITLE XV.—MISCELLANEOUS PROCEEDINGS.

##### OFFER TO COMPROMISE.

SEC. 565. [**Before trial—Effect.**].—The defendant in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff, or

SEC. 561. See sec. 322, ante p. 573.

SEC. 562. Judgment entered against "W. G. Bowman and J. L. Bowman." Entered by clerk on execution docket "W. G. & J. L. Bowman," held sufficient. 2 Neb. 284.

his attorney, an offer in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer, and give notice thereof to the defendant or his attorney, within five days after the offer is served, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given, in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence, or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

SEC. 566. [**Same—Continuance.**—The making of an offer pursuant to the provisions contained in the foregoing section, shall not be a cause for a continuance of an action, or a postponement of a trial.

#### SUBMITTING A CONTROVERSY.

SEC. 567. [**Submission without action.**—Parties to a question which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment as if an action were pending.

SEC. 568. [**Record.**—The case, the submission, and the judgment shall constitute the record.

SEC. 569. [**Judgment—Effect.**—The judgment shall be with costs, may be enforced, and shall be subject to reversal, in the same manner as if it had been rendered in an action, unless otherwise provided in the submission.

#### OFFER TO CONFESS JUDGMENT.

SEC. 570. [**After action brought.**—After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or, having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and on the trial do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant, incurred after the offer. The offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

SEC. 571. [**Before action brought.**—Before any action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, and offer to confess judgment in favor of such person for a specified sum on such cause of action. Whereupon, if such person, having had such notice that the offer would be made, of its amount, and of the time and place of making it, as the court shall deem reasonable, do not attend to accept the confession, or attending, refuse to accept it, and should afterwards commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action, or amount to which the plaintiff is entitled, nor be given in evidence.

#### MOTIONS AND ORDERS.

SEC. 572. [**Motion—Defined.**—A motion is an application for an order

addressed to the court or a judge in vacation, by any party to a suit or proceeding, or one interested therein.

SEC. 573. [**Same—Several objects.**].—Several objects may be included in the same motion, if they all grow out of or are connected with the action or proceeding in which it is made.

SEC. 574. [**Same—Notice—Contents.**].—Where notice of a motion is required, it must be in writing, and shall state the names of the parties to the action or proceeding in which it is to be made, the name of the court or judge before whom it is to be made, the place where and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and if affidavits are to be used on the hearing, the notice shall state that fact. It shall be served a reasonable time before the hearing.

SEC. 575. [**Notice—Service.**].—Notices of motions mentioned in this chapter may be served by a sheriff, coroner, or constable, or by any disinterested person, and the return of any such officer, or affidavit of any such person, shall be proof of service. The service shall be on the party or his attorney of record, if the said party or his attorney be resident within the county in which the motion is made, and in case there is more than one party adverse to such motion, service shall be made upon each party or his attorney.

SEC. 576. [**Same.**].—The service of a notice shall be made, as is required by law for the service of a summons, and when served by an officer, he shall be entitled to like fees.

SEC. 577. [**Motions to strike pleadings from files.**].—Motions to strike pleadings and papers from the files may be made with or without notice, as the court or judge shall direct.

SEC. 578. [**Order—Defined.**].—Every direction of a court or judge, made entered in writing and not included in a judgment, is an order.

SEC. 579. [**Same—Out of court—Entry.**].—Orders made out of court, shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term.

## TITLE XVI.—ERRORS IN CIVIL CASES.

### PROCEEDINGS TO REVERSE, VACATE OR MODIFY JUDGMENTS AND ORDERS IN COURTS OF APPELLATE JURISDICTION.

SEC. 580. [**Tribunals inferior to district court.**].—A judgment rendered, or final order made, by a probate court, justice of the peace, or any other tribunal, board, or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated, or modified by the district court.

SEC. 581. [**Final order—Defined.**].—An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, is a final order which may be vacated, modified or reversed, as provided in this title.

SEC. 582. [**Of district court.**].—A judgment rendered or final order made by the district court, may be reversed, vacated or modified by the supreme court, for errors appearing on the record.

SEC. 583. [**Repealed 1877, 14.**]

SEC. 580. Decision of "county board of equalization" is a final order. 3 Neb. 41. Error appearing "upon record of county judge" may be reviewed. 7 Neb. 128. An order of county court allowing account against estate may be reviewed. 10 Neb. 333.

SEC. 581. What is a final judgment or order. 5 Neb. 240. 8 Neb. 298, 398. 9 Neb. 277. What is not. 1 Neb. 311. 2 Neb. 309. 3 Neb. 254. 5 Neb. 194, 382. 7 Neb. 228, 262, 398. 8 Neb. 17. 10 Neb. 104, 441, 511.

SEC. 582. When error is without prejudice judgment will not be reversed. 5 Neb. 489. 6 Neb. 412. 8 Neb. 157. 9 Neb. 61, 108. 10 Neb. 188, 275, 482, 534. Mere difference of opinion between reviewing court and one which tried cause not sufficient to reverse judgment. There must be a preponderance of evidence against it. 5 Neb. 83, 126, 433, 453. 7 Neb. 41. 8 Neb. 426, 495. 9 Neb. 14, 61, 187, 493. 10 Neb. 353, 448, 612. Where there is, court will correct the mistake. 5 Neb. 526. 6 Neb. 306, 315. 8 Neb. 372. And

**SEC. 584. [How obtained—Proceedings.]**—The proceedings to obtain such reversal, vacation, or modification, shall be by petition, to be entitled, "petition in error," filed in a court having power to make such reversal, vacation, or modification, setting forth the errors complained of, and thereupon a summons shall issue and be served, or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall notify the adverse party that a petition in error has been filed in a certain case, naming it, and shall be made returnable on or before the first day of the term of the court, if issued in vacation; if issued in term time, it shall be returnable on a day named therein; if the last publication or service of the summons shall be made ten days before the end of the term, the case shall stand for hearing at the term.

**SEC. 585. [Summons in error.]**—The summons mentioned in the last section, shall, upon the written precept of the plaintiff in error, or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error or his attorney of record may be; and if the writ issue to a foreign county, the sheriff thereof may return the same by mail to the clerk, and shall be entitled to the same fees as if the same had been returnable to the district court of the county in which such officer resides. The defendant in error, or his attorney, may waive in writing the issuing or service of the summons.

**SEC. 586. [Transcript.]**—The plaintiff in error shall file with his petition a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated, or modified.

**SEC. 587. [Same—How furnished.]**—Judges of probate courts, justices of the peace, and other judicial tribunals having no clerk, and clerks of every court of record, shall, upon request and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order of said courts, to either of the parties to the same, or to any person interested in procuring such transcript.

**SEC. 587 a. [Original bills of exception may be used.]**—**SEC. 1.** That in all cases or proceedings, now pending, or hereafter to be brought, in any district court of this state, as well as in all cases, or proceedings, that have been finally adjudicated in any of said courts within six months next prior to the date of the passage of this bill, which it is sought or desired to remove to the supreme court of this state on proceedings in error or by appeal in equity in the manner now prescribed by law, it shall not be necessary to copy the bill, or bills of excep-

also where there is an entire failure of proof. 7 Neb. 146. But it must be a clear case of want of proof. 10 Neb. 384. Presumptions are in favor of finding or verdict and judgment. 1 Neb. 403. 4 Neb. 582. 6 Neb. 523. 7 Neb. 197. 8 Neb. 437, 439. 10 Neb. 185, 320, 578. Error never presumed. 4 Neb. 415. No errors considered except those assigned in motion for new trial, and these must be specifically pointed out in petition in error. Assignments must be definite. 1 Neb. 406. 2 Neb. 317. 3 Neb. 117, 278, 448. 4 Neb. 415. 5 Neb. 186. 6 Neb. 129, 381. 7 Neb. 9, 138, 222. 8 Neb. 15, 137, 141, 143, 276, 386. 9 Neb. 95, 211, 250, 386. 10 Neb. 390, 443, 475, 523. But see amendment to sec. 317, ante p. 573. Supreme court will not review decision of county board of equalization on agreed state of facts, none of the statutory steps having been taken to bring case up. 5 Neb. 367. A party having appealed from a judgment has so far recognized it as to be estopped from assailing it by subsequent proceedings as having been irregularly entered. 3 Neb. 442. If testimony is introduced without objection, error will not lie on ground that it was improperly admitted. 8 Neb. 317. If record is silent as to ruling of court on objections made whereby evidence is excluded, no question is presented for review. 10 Neb. 38. A judgment settled by agreement in nature of compromise is not reviewable on error. 10 Neb. 361. Where finding below is not disputed and the only question is one of law, testimony need not be brought up. 4 Neb. 55.

**SEC. 584.** Petition must be filed before summons issues. 1 Neb. 10. It need not be verified. 9 Neb. 505. Summons issued in one year, but may be served afterwards. 10 Neb. 332. Cause dismissed for want of prosecution. 3 Neb. 372. On motion to dismiss, sufficiency of assignments in motion for new trial will not be considered. 8 Neb. 96. Motion to strike petition from the files on ground that there is no proper bill of exceptions will not be entertained. 5 Neb. 217. Appeal being dismissed party allowed to file petition in error. 4 Neb. 567. Waiver of error after final judgment should be set up by plea. 10 Neb. 360. Rehearing in supreme court. 2 Neb. 26. 6 Neb. 253. 7 Neb. 205. See Rule XVI, 10 Neb. XI.

**SEC. 585.** Attorney of record may waive issuance of summons. 1 Neb. 325.  
**SEC. 586.** Rules governing form and make up of transcript. 1 Neb. 100, 363. 2 Neb. 10, 170. 6 Neb. 413. Paper not rightly in record will on motion be stricken out. 1 Neb. 181. Explanatory notes of clerk not a part of transcript. 2 Neb. 66. Motion to strike out part of transcript not considered. Objection must be made at argument. 3 Neb. 186. Mistake in day of filing will be corrected. 4 Neb. 405.

**SEC. 587 a-d.** "An act to authorize the use of original bills of exception and testimony preserved in equity cases, in making transcripts and records of cases and proceedings at law and in equity, on removal thereof to the supreme court, and to provide for the costs incidental thereto." Approved and took effect Mar. 1, 1881.

tion, or the depositions, testimony and proof, in cases that have been preserved in form similar to bills of exception, or otherwise, as contemplated by an act passed March 3, 1873, entitled "An act to provide for appeals in actions in equity," taken or used in any such case or proceeding, into the transcript or record for the supreme court, but such original bills of exception and testimony in equity so as aforesaid preserved, shall be, on the request of any party, desiring to so prosecute such case or proceeding to the supreme court, attached to the transcript or record of such other parts of the record in the case or proceeding as may be desired by such party, and the transcript or record for the supreme court, so made up, shall be received in all respects as if the said bill or bills of exceptions, or depositions, testimony and proofs in equity cases so as aforesaid properly preserved, were copied into such transcript or record for the supreme court.

**Sec. 587 b. [Certificate of clerk.]**—Sec. 2. And it is further enacted that when the original bill or bills of exceptions, or testimony in equity cases, is so as aforesaid made a part of a transcript or record for the supreme court, the clerk shall state such fact in his certificate thereto, and omit to certify that the same have been copied into such record or transcript. [1881, 204.]

**Sec. 587 c. [Original returned after trial.]**—Sec. 3. When any case or proceeding in which the record or transcript has been so as aforesaid made up, shall have been finally determined in the supreme court, the said original bill or bills of exception, and testimony, shall be by the clerk of the supreme court transmitted to the clerk of the district court below, whence such case or proceeding was removed, on the request of any party to the suit or proceeding, provided the cost of the transmittal thereof shall be first paid to said clerk of the supreme court if he shall demand it, by the party applying therefor.

**Sec. 587 d. [Rehearing.]**—Sec. 4. In the event a rehearing of any such cause or proceeding shall be allowed by the supreme court, or if, for any other reason, said court shall need or desire the use of such original bill or bills of exception, or testimony in equity cases, it is hereby authorized to order the return of the same to it, and it shall be the duty of the clerk of the court in whose custody the same may be, to transmit the same to the clerk of the supreme court upon being personally served with a copy of such order of the supreme court duly certified under the seal of the court; and the expense of the transmittal of such bills and testimony, together with the costs made in recording, certifying and serving such order shall be taxed to the unsuccessful party to such suit or proceeding, unless the supreme court shall otherwise order, provided that the party at whose instance such expense of transmittal is to be made shall advance the same to the clerk who is desired to incur such expense if required by him. Service of such certified copy of said order may be made by any person; if done by the sheriff of any county, his official return shall be sufficient evidence of the fact of service; if by any other person the service shall be sufficiently proved, by his affidavit of the fact.

**Sec. 588. [Stay of execution.]**—No proceeding to reverse, vacate, or modify any judgment or final order rendered in the probate court, or district court, except as provided for in the next section, and the fourth subdivision of this section, shall operate to stay execution, unless the clerk of the court in which the record of said judgment or final order shall be, shall take a written undertaking, to be executed on the part of the plaintiff in error to the adverse party, with one or more sufficient sureties, as follows: *First.* When the judgment or final order sought to be reversed, directs the payment of money, the written undertaking shall be in double the amount of the judgment or order, to the effect that the plaintiff in error will pay the consideration money and costs in case the judgment or final order shall be affirmed in whole or in part. *Second.* When it directs the execution of a conveyance or other instrument, the undertaking shall be in such sum as may be prescribed by any court of record in this state, or any judge thereof, to the effect that the plaintiff in error will abide the judgment, if the same shall be affirmed, and pay the costs. *Third.* When it directs the sale or delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by any court

of record or any judge thereof, to the effect that during the possession of such property by the plaintiff in error, he will not commit or suffer to be committed, any waste thereon, and if the judgment be affirmed he will pay the value of the use and occupation of the property, from the date of the undertaking until the delivery of the possession pursuant to the judgment, and all costs. *Fourth.* When it directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which judgment was rendered, to abide the judgment of the appellate court, or the undertaking may be in such sum as may be prescribed as aforesaid, to abide the judgment and pay costs, if the same shall be affirmed. [Amended 1875, 131. Took effect Feb. 25, 1875.]

**SEC. 589. [Same—Instrument deposited in court.]**—Instead of the undertaking prescribed in the second subdivision of the last section, the conveyance or other instrument may be executed and deposited with the clerk of the court in which the judgment was rendered or order made, to abide the judgment of the appellate court.

**SEC. 590. [Same—When takes effect.]**—Before the written undertaking herein mentioned in section five hundred and eighty-eight, shall operate to stay execution of the judgment or order, a petition in error must be filed in the appellate court, and the execution of the undertaking and the sufficiency of the sureties, must be approved by the court in which the judgment was rendered or order made, or by the clerk thereof; and the clerk shall endorse said approval, signed by himself, upon the undertaking, and file the same in his office for the defendant in error. [Amended to take effect Sept. 1, 1873. G. S. 690.]

**SEC. 591. [Judgment, how enforced when error taken.]**—In an action arising on contract, for the payment of money only, notwithstanding the execution of the undertaking in the last section mentioned, to stay proceedings, if the defendant in error give adequate security to make restitution in case the judgment is reversed or modified, he may, upon leave obtained from the court below, or a judge thereof in vacation, proceed to enforce the judgment. Such security must be an undertaking executed to the plaintiff in error by at least two sufficient sureties, to the effect that if the judgment be reversed or modified, he will make full restitution to the plaintiff in error of the money by him received under the judgment.

**SEC. 592. [When commenced—Limitation.]**—No proceedings for reversing, vacating, or modifying judgments or final orders, shall be commenced unless within one year after the rendition of the judgment, or making of the final order complained of, or in case the person entitled to such proceedings be an infant, a person of unsound mind, or imprisoned, within one year as aforesaid, exclusive of the time of such disability; *Provided*, That the provisions of this act shall only apply to judgments or decrees rendered after the date of its taking effect. [1875, 40. Amended 1877, 14. Took effect June 1, 1877.]

**SEC. 593. [Stay of execution—Undertaking.]**—No proceedings to reverse, vacate, or modify any judgment rendered, or final order made, by a justice of the peace, shall operate as a stay of execution, unless the clerk of the district court shall take a written undertaking to the defendant in error, executed on the part of the plaintiff in error, by one or more sufficient sureties, to the effect that the plaintiff will pay all the costs which have accrued or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the case, after the judgment of the court below shall have been set aside or reversed, or upon and after the affirmance thereof in the district court. Nor shall said proceedings operate as a stay of execution on judgments of restitution rendered in actions for

SEC. 592. Original section read three years. Amended in 1875 to read six months. Amended in 1877 as it now stands. Judgment rendered May 17, 1877, petition in error filed Dec. 13, 1877, *held* too late as act of 1877 did not take effect until June 1. 7 Neb. 125. And see 8 Neb. 147. Proceedings not deemed "commenced" until summons is issued which shall be duly served. 8 Neb. 150. But if issued within the year, it may be served afterwards. 10 Neb. 332. Words "unsound mind" are used in same sense as word "insane." 10 Neb. 541.

the forcible entry and detention, or the forcible detention only, of lands and tenements, unless a further undertaking shall be taken in the manner aforesaid, conditional for the payment to the defendant in error of all money or sums of money that has accrued or may accrue to said defendant from the plaintiff in error for the use, occupation, or rent of the lands and tenements in controversy, in case the judgment sought to be reversed, shall be affirmed. [Amended 1871, 110. Took effect Mar. 25, 1871.]

**SEC. 594. [Proceedings in supreme court on reversal—Mandate.]**—When a judgment or final order shall be reversed either in whole or in part, in the supreme court, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment; and the court reversing such judgment or final order, shall not issue execution in causes that are removed before them on error, on which they pronounced judgment as aforesaid, but shall send a special mandate to the court below, as the case may require, to award execution thereupon; and it shall be the duty of the judges of the supreme court to prepare and file their opinion in every case as brought before them, within sixty days after the decision of the same, and no mandate shall be sent to the court below until the opinion provided for by this section has been filed. The court to which such special mandate is sent, shall proceed in such case in the same manner as if such judgment or final order had been rendered therein, and on motion and good cause shown, it may suspend any execution made returnable before it by order of the supreme court, in the same manner as if such execution had been issued from its own court, but such power shall not extend further than to stay proceedings until the matter can be further heard by the supreme court. [Amended 1875, 40. Took effect Feb. 25, 1875.]

**SEC. 595. [Costs on error.]**—When a judgment or final order is reversed, the plaintiff in error shall recover his costs, and when reversed in part, and affirmed in part, costs shall be equally divided between the parties.

**SEC. 596. [No reasonable ground of error—Penalty.]**—When a judgment or final order shall be affirmed in the supreme court, the said court shall also render judgment against the plaintiff in error for five per cent. upon the amount due from him to the defendant in error, unless the court shall enter upon its minutes, that there was reasonable ground for the proceedings in error.

**SEC. 597. [Mistake of clerk.]**—A mistake, neglect, or omission of the clerk shall not be a ground of error, until the same has been presented and acted upon in the court in which the mistake, neglect, or omission occurred.

**SEC. 598. [Premature judgment.]**—Rendering judgment before the action stood for trial according to the provisions of this code, shall be deemed a clerical error.

**SEC. 599. [Certiorari writ abolished.]**—Writs of error and *certiorari* to reverse, vacate, or modify judgments or final orders in civil cases, are abolished, but courts shall have the same power to compel, complete, and perfect transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished, as they heretofore had under writs of error and *certiorari*.

**SEC. 600. [Affirmance of justice's judgment.]**—If the judgment of a justice of the peace, taken on error as herein provided, to the district court, be affirmed, it shall be the duty of such court to render judgment against the plaintiff in error, for the costs of suit, and to award execution therefor; and the court shall thereupon order its clerk to certify its decision in the premises, to the justice, that the judgment affirmed may be enforced, as if such proceedings in error had not been taken; or such court may award execution to carry into effect the judgment of such justice, in the same manner as if such judgment had been rendered in the district court.

**SEC. 594.** If new trial cannot be awarded supreme court will enter judgment and not remand cause. 3 Neb. 290. If a party after an adverse ruling upon his demurrer to a pleading elects to stand upon it, and brings same up for review, when judgment is affirmed, cause will not be remanded with leave to answer to the merits. 8 Neb. 502.



**Sec. 601. [Reversal of justice's judgment.]**—When the proceedings of a justice of the peace are taken on error to the district court, in manner aforesaid, and the judgment of such justice shall be reversed or set aside, the court shall render judgment of reversal, and for the costs that have accrued up to that time, in favor of the plaintiff in error, and award execution therefor; and the cause shall be retained by the court for trial and final judgment as in cases of appeal.

**Sec. 601 a. [Complete record supreme court.]**—**SEC. 12.** A complete record of every cause in the supreme court, as soon as it is finally determined, shall be made by the clerk of such court. Such record shall consist of the petition in error, the process and subsequent pleadings, and opinion of the court, but shall not include the transcript of proceedings had in the district court. [G. S. 713.]

**PROCEEDINGS TO REVERSE, VACATE OR MODIFY JUDGMENTS AND ORDERS IN THE COURTS IN WHICH THEY ARE RENDERED.**

**Sec. 602. [District court—After term.]**—A district court shall have power to vacate or modify its own judgments or orders, after the term at which such judgment or order was made: *First.* By granting a new trial of the cause, within the time and in the manner prescribed in section three hundred and eighteen. *Second.* By a new trial granted in proceedings against defendants constructively summoned, as provided in section seventy-seven. *Third.* For mistake, neglect or omission of the clerk, or irregularity in obtaining a judgment or order. *Fourth.* For fraud practiced by the successful party in obtaining the judgment or order. *Fifth.* For erroneous proceedings against an infant, married woman or person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings. *Sixth.* For the death of one of the parties before the judgment in the action. *Seventh.* For unavoidable casualty or misfortune, preventing the party from prosecuting or defending. *Eighth.* For errors in a judgment shown by an infant in twelve months after arriving at full age, as prescribed in section four hundred and forty-two. *Ninth.* For taking judgments upon warrants of attorney, for more than was due to the plaintiff, when the defendant was not summoned, or otherwise legally notified of the time and place of taking such judgment.

**Sec. 603. [Same—Proceedings.]**—The proceedings to vacate or modify the judgment or order on the grounds mentioned in subdivisions four, five, six, seven, eight and nine of the last preceding section, shall be by petition verified by affidavit, setting forth the judgment or order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On such petition a summons shall issue and be served as in the commencement of an action; *Provided,* Such summons shall not issue in any case in which there is upon the minutes of the court, or among the files of the case, a waiver of error by the party or his attorney, unless the court, or a judge thereof, shall endorse upon the petition permission to issue such summons.

**Sec. 604. [Correction of mistakes—Vacate judgment—When.]**—The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action. The motion to vacate a judgment

**Sec. 601.** The judgment of reversal under this section is final and may be reviewed in supreme court, but if there be a failure to except and take steps to set it aside until after case has proceeded to final judgment it is too late to complain. 5 Neb. 241.

**Sec. 601 a.** Being sec. 12 of "An act to amend the code of civil procedure." G. S. 713.

**Sec. 602.** Ignorance of the time fixed by law for holding term of court whereby plaintiff's case was dismissed for want of prosecution, is not such "unavoidable casualty" as entitles him to relief. 2 Neb. 143. Court cannot substitute a stranger as a party defendant, under this section. 8 Neb. 467. A married woman does not come within protection of subdivision five. 6 Neb. 187. See also 3 Neb. 25. Proceedings under this section are not subject to review by appeal, but by petition in error. 2 Neb. 145. 5 Neb. 193. 9 Neb. 533. The provisions fix a limitation upon the powers of the court, manner and time of its exercise. 10 Neb. 192. See also note to sec. 318.

**Sec. 604.** Cited 2 Neb. 71. 6 Neb. 187.

because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term.

**Sec. 605. [Decision of court.]**—The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying or deciding upon the validity of the defense or cause of action.

**Sec. 606. [Judgment not vacated—When liens—Securities preserved.]**—A judgment shall not be vacated on motion or petition, until it is adjudged that there is a valid defense to the action in which the judgment is rendered, or, if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

**Sec. 607. [Injunction—Suspending proceedings.]**—The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court, or any judge thereof, upon its being rendered probable, by affidavit or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

**Sec. 608. [Same.]**—When the judgment was rendered before the action stood for trial, the suspension may be granted as provided in the last section, although no valid defense to the action is shown; and the court shall make such orders concerning the executions to be issued on the judgment, as shall give to the defendant the same rights of delay he would have had if the judgment had been rendered at the proper time.

**Sec. 609. [When commenced -- Limitation.]**—Proceedings to vacate or modify a judgment or order, for the causes mentioned in subdivision four, five and seven of section six hundred and two, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto be an infant, married woman, or person of unsound mind, and then within two years after removal of such disability. Proceedings for the causes mentioned in subdivisions three and six of the same section, shall be within three years, and in subdivision nine within one year, after the defendant has notice of the judgment.

**Sec. 610. [Application to supreme and county courts.]**—The provisions of this title subsequent to section six hundred and one, shall apply to the supreme court and probate court, so far as the same may be applicable to the judgments or final orders of such courts. The parties shall be limited to the same time in which to commence proceedings; *and in estimating time, the probate court shall, for this purpose, be considered as holding, in each year, three terms of four months each, the first commencing on the first day of January of each year.*

**Sec. 611. [Cases pending in appellate court.]**—Cases pending in appellate courts on writs of error or otherwise, when this code takes effect, shall be conducted to final judgment, as if it had not been adopted, and the liens of judgments and decrees rendered when it takes effect shall be preserved.

## TITLE XVII.—Costs.

**Sec. 612. [Security—Non-resident plaintiff.]**—In all cases in which the plaintiff is a non-resident of the county in which the action is to be brought, before commencing such action the plaintiff must furnish a sufficient surety for costs. The surety must be a resident of the county where the action is to be brought, and approved by the clerk. His obligation shall be complete, simply by endorsing the summons, or signing his name on the complaint as security for costs. He shall be bound for the payment of all costs, which may be adjudged against the plaintiff in the court in which the action is brought, or in any other to

**Sec. 609.** See note to section 318.

**Sec. 610.** Whether the part in italics is superseded by act regulating powers and jurisdiction of probate courts, *quære*. See chapter 20, ante page 204.

**Sec. 612.** Cited 6 Neb. 521.

which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtain judgment or not.

**SEC. 613. [Same—Failure—Action dismissed.]**—An action in which security for the costs is required by the last section, and has not been given shall be dismissed on motion and notice by the defendant at any proper time before judgment, unless in a reasonable time to be allowed by the court, such security for costs be given.

**SEC. 614. [Same—Plaintiff becoming non-resident.]**—If the plaintiff in an action after its commencement, become a non-resident of the county in which it was brought, he shall give security for costs in the manner and under the restrictions provided in the two preceding sections.

**SEC. 615. [Additional security.]**—In an action in which security for costs has been given, the defendant may at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court be satisfied that the surety has removed from this state, or is not sufficient, the action may be dismissed, unless, in a reasonable time to be fixed by the court, sufficient security be given by plaintiff.

**SEC. 616. [Judgment against surety for costs.]**—After final judgment has been rendered in an action in which security for costs has been given, as required by this chapter, the court, on motion of the defendant, or any other person having a right to such costs, or any part thereof, after ten days notice of such motion, may enter up judgment in the name of the defendant, or his legal representatives, against the surety for costs, his executors or administrators, for the amount of the costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment, as in other cases, for the use and benefit of the persons entitled to such costs.

**SEC. 617. [Informers under penal statutes.]**—If any informer, under a penal statute, to whom the penalty, or any part thereof, if recovered, is given, shall dismiss his suit or prosecution, or fail in the same, he shall pay all costs accruing on such suit or prosecution unless he be an officer whose duty it is to commence the same.

**SEC. 618. [Defendant disclaiming.]**—Where defendants disclaim having any title or interest in land or other property, the subject matter of the action, they shall recover their costs, unless for special reasons the court decide otherwise.

**SEC. 619. [Motions—Amendments.]**—Unless otherwise provided by statute, the costs of motions, continuances, amendments, and the like, shall be taxed and paid as the court in its discretion may direct.

**SEC. 620. [Plaintiff—Allowed of course.]**—When it is not otherwise provided by this and other statutes, costs shall be allowed of course to the plaintiff, upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific real or personal property.

**SEC. 621. [Same—Not allowed.]**—If it shall appear that a justice of the peace has jurisdiction of an action, and the same has been brought in any other court, the plaintiff shall not recover costs; and in all actions for libel, slander, malicious prosecution, assault, battery, false imprisonment, criminal conversation, seduction, actions for nuisance, or against a justice of the peace for misconduct in office, if the damages assessed be under five dollars, the plaintiff shall not recover any costs.

**SEC. 622. [Defendant—Allowed of course.]**—Costs shall be allowed of course to any defendant upon a judgment in his favor in the actions mentioned in the last two sections.

**SEC. 623. [Under control of court—When.]**—In other actions the

**SEC. 620.** See sec. 625 a, b.

**SEC. 621.** Cited 2 Neb. 77. County courts have a distinct jurisdiction from that of a justice of the peace. If action is brought there and amount claimed exceeds one hundred dollars, but verdict is for less, plaintiff cannot recover costs. 5 Neb. 99. But if amount claimed and recovered is less than \$100, plaintiff is entitled to costs. 9 Neb. 263. Jurisdiction is determined by amount recovered. 6 Neb. 102. And see 9 Neb. 473.

court may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.

**SEC. 624. [Several actions on one instrument.]**—Where several actions are brought on one bill of exchange, promissory note, or other obligation or instrument in writing, against several parties, who might have been joined as defendants in the same action, as allowed by section forty-four, no costs shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within the state.

**SEC. 625. [Fees—Summons issued to another county.]**—When a summons is issued to another county than that in which the action or proceeding is pending, it may be returned by mail, and the sheriff shall be entitled to the same fees as if the summons had issued in the county of which he is sheriff.

**SEC. 625 a. [Postponement of trial.]**—**SEC. 1.** That when an application shall be made to a court of record to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the costs of the term, may in the discretion of the judges be imposed as a condition of granting the postponement. [1875, 63.]

**SEC. 625 b. [Motions—Demurrers.]**—**SEC. 2.** Costs may be allowed on a motion or demurrer in the discretion of the court or judge, not exceeding ten dollars, which shall be absolute against the losing party on such demurrer or motion: *Provided*, That this provision shall not apply to verbal motions and demurrers *ore tenus* during the course of the trial.

## TITLE XVIII.—ACTIONS AND PROCEEDINGS IN PARTICULAR CASES.

### CHAPTER I.—ACTIONS CONCERNING REAL PROPERTY.

**SEC. 626. [Recovery—Petition—Allegations.]**—In an action for the recovery of real property, it shall be sufficient, if the plaintiff state in his petition that he has a legal estate therein, and is entitled to the possession thereof, describing the same, as required by section one hundred and thirty-three, and that the defendant unlawfully keeps him out of the possession. It shall not be necessary to state how the plaintiff's estate or ownership is derived.

**SEC. 627. [Answer.]**—It shall be sufficient in such action, if the defendant in his answer deny, generally, the title alleged in the petition, or that he withholds possession, as the case may be; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part for which defense is made.

**SEC. 628. [Tenants in common.]**—In an action by a tenant in common of real property, against a co-tenant, the plaintiff must state, in addition to what is required in the first section of this chapter, that the defendant either denies the plaintiff's right, or did some act amounting to such denial.

**SEC. 629. [Plaintiff's right terminating during pendency of action.]**—In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover for withholding the property.

**SEC. 630. [Two trials allowed.]**—In an action for the recovery of real property, the party against whom judgment is rendered may, at any time during the term at which the judgment is rendered, demand another trial by notice on the journal, and thereupon the judgment shall be vacated, and the action shall stand for trial at the next term.

SEC. 625 a, b. "An act to provide for the taxing of costs in certain cases." Laws 1875, 63.

SEC. 626. Fraud may be shown in an action of ejectment to avoid a deed. But facts need not be specially plead. 2 Neb. 118. Any language of equivalent import to this section may be used in stating a cause of action. 9 Neb. 85. The action can only be supported by showing a legal title in plaintiff. 2 Neb. 451. Plaintiff must recover on strength of his own title. 5 Neb. 525. Equitable defenses may be set up. 6 Neb. 367.

SEC. 631. [**Same.**].—No further trial can be had in such action, except upon appeal, unless for good cause shown, as in other actions.

SEC. 632. [**Occupying claimants.**].—The parties in an action for the recovery of property may avail themselves, if entitled thereto, of the relief of the statutes in force for the relief of occupying claimants of land.

SEC. 633. [**Waste—Damages.**].—If a guardian, tenant for life or years, joint tenant or tenant in common of real property, commit waste thereon, he is liable to pay three times the damages which have resulted from such waste, to the person entitled to sue therefor.

SEC. 634. [**Same—Judgment of forfeiture and conviction.**].—Judgment of forfeiture and conviction may be rendered against the defendant, whenever the amount of damages so recovered is more than two-thirds the value of the interest such defendant has in the property wasted, and when the action is brought by the person entitled to the reversion.

SEC. 635. [**Same—By whom.**].—Any person whose duty it is to prevent waste, and who has not used reasonable care and diligence to prevent it, is deemed to have committed it.

SEC. 636. [**Wilful trespass—Damages.**].—For wilful trespass, injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or town lot, or on the public grounds of any town, or any land held by this state, for any purpose whatever, the trespasser shall pay treble damages at the suit of any person entitled to protect or enjoy the property aforesaid.

SEC. 637. [**Same—Wood from uncultivated lands.**].—Nothing herein contained authorizes the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge in its immediate neighborhood.

SEC. 638. [**Remaindermen—Reversioners.**].—The owner of an estate in remainder or reversion, may maintain either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years.

SEC. 639. [**Same—Heirs.**].—An heir, whether a minor or of full age, may maintain these actions for injuries done in the time of his ancestors as well as in his own time, unless barred by the statute of limitations.

SEC. 640. [**Lands sold on execution.**].—Where lands or tenements are sold by virtue of an execution, the purchaser at such sale may maintain his action against any person, for either of the causes above mentioned, occurring or existing after his purchase.

SEC. 641. [**Timber used for repairs.**].—This provision is not intended to prevent the person who occupies the lands, in the meantime, from using them in the ordinary course of husbandry, or from using timber for the purpose of making suitable repairs thereon.

SEC. 642. [**Same—When deemed waste.**].—But if for this purpose he employ timber vastly superior to that required for the occasion, he will be deemed to have committed waste, and will be liable accordingly.

#### CHAPTER II.—ACTIONS ON OFFICIAL SECURITIES.

SEC. 643. [**By whom and how brought.**].—When an officer, executor, or administrator within this state, by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is by law entitled to the benefit of the security may bring an action thereon, in his own name, against the officer, executor, or administrator, and his sureties, to recover the amount to which he may be entitled by reason of the delinquency. The ac-

SEC. 632. See ante p. 365.

SEC. 643. In action by a private person, obligee of bond is not a necessary party, even where a reformation of bond is part of the relief sought. 4 Neb. 588. Whether legatee alone can bring an action on bond of executor, *quæres*. 9 Neb. 290. This section is limited to cases of private injury. 9 Neb. 434. See note to sections 32, 62.

tion may be instituted and proceeded in on a certified copy of the bond, which copy shall be furnished by the person holding the original thereof.

SEC. 644. [**Several delinquencies.**—A judgment in favor of a party for one delinquency, does not preclude the same or another party from an action on the same security for another delinquency. .

#### CHAPTER III.—PROCEEDINGS UPON MANDAMUS.

SEC. 645. [**Office of writ.**—The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station. But though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions it cannot control judicial discretion.

SEC. 646. [**When not issuable—Party interested.**—This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may issue on the information of the party beneficially interested.

SEC. 647. [**Commands of writs.**—The writ is either alternative or peremptory. The alternative writ must state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court whence the writ issued, at a specified time and place, why he has not done so; and that he then and there return the writ, with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

SEC. 648. [**Which writ issued.**—When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance. In all other cases, the alternative writ must first be issued.

SEC. 649. [**Motion for writ—Notice.**—The motion for the writ must be made upon affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

SEC. 650. [**Allowance—Service—Contempt.**—The allowance of the writ must be endorsed thereon, signed by a judge of the court granting it, and the writ must be served personally upon the defendant. If the defendant duly served neglect to return the same, he shall be proceeded against, as for contempt.

SEC. 651. [**Answer.**—On the return day of the alternative writ, or such further day as the court may allow, the party on whom the writ shall have been served, may show cause, by answer made, in the same manner as an answer to a petition in a civil action.

SEC. 652. [**Same—Default—New matter.**—If no answer be made, a peremptory mandamus must be allowed against the defendant. If an answer be made containing new matter, the same shall not in any respect conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objection to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

SEC. 653. [**Pleadings.**—No other pleading or written allegation is allowed,

SEC. 645. Right to office cannot be tried by mandamus. 1 Neb. 173. 10 Neb. 207. Mandamus is proper remedy, and writ lies when. 2 Neb. 7. 4 Neb. 161, 413. 5 Neb. 147. 6 Neb. 92, 295, 404. 8 Neb. 94, 119. 9 Neb. 148. 10 Neb. 63. When not. 4 Neb. 53, 288. 7 Neb. 133. 8 Neb. 293. 9 Neb. 506. 10 Neb. 24, 36, 50, 363, 386.

SEC. 646. See 9 Neb. 506.

SEC. 647. Omissions in alternative writ cannot be supplied by reference to affidavit on which it was allowed. 8 Neb. 93.

SEC. 649. Application verified upon information and belief is insufficient. 4 Neb. 260. 8 Neb. 98. And affidavit for continuance also. 5 Neb. 96. Application must state, what. 7 Neb. 133. 8 Neb. 92. 9 Neb. 459. 10 Neb. 20.

SEC. 652. It seems if a party demur to application and demurrer is overruled writ will issue. 3 Neb. 253.

than the writ and answer. These are the pleadings in the case, and have the same effect and are to be construed and may be amended in the same manner as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had in the same manner as in a civil action.

SEC. 654. [**Damages.**—If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the court or a jury, or by referees, in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.

SEC. 655. [**Same—Bar to other action.**—A recovery of damages by virtue of this chapter, against a party, who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.

SEC. 656. [**Disobedience—Contempt—Fine.**—Whenever a peremptory mandamus is directed to any public officer, body, or board, commanding the performance of any public duty, specially enjoined by law, if it appear to the court that such officer, or any member of such body or board, has without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding five hundred dollars, upon every such officer, or member of such body or board. Such fine, when collected, shall be paid into the treasury of the county where the duty ought to have been performed; and the payment thereof is a bar to an action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

#### TITLE XIX.—JURIES.

SEC. 657. [**Persons competent.**—All *free white* males residing in any of the counties of this state, having the qualifications of electors, and being over the age of twenty-one years, and of sound mind and discretion, and not being judges of the supreme court or district courts, clerks of the supreme or district courts, sheriffs, coroners, or jailers, or subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense, punishable by imprisonment in the penitentiary, and are not subject to disability for the commission of any offense which by special provision of law does or shall disqualify them, are and shall be competent persons to serve on all grand and petit juries, within their counties respectively; *Provided*, That persons over sixty years of age, ministers of the gospel, probate judges, county commissioners, licensed attorneys, practicing physicians, postmasters, and carriers of the United States mails, shall not be compelled to serve as jurors.

SEC. 657 a. [**Same—Municipal corporations—Party to action.**—SEC. 1. That on the trial of any suit in which a municipal corporation is a party, the inhabitants and tax-payers of such municipal corporation shall be competent jurors if otherwise competent and qualified according to law. [1875, 16.]

SEC. 658. [**List by county commissioners.**—In each of the counties in this state, wherein a district court is appointed or directed to be holden, the county commissioners of the county shall, at least fifteen days before the first day of the session of the court, meet together, or any two of them may meet, and select sixty persons possessing the qualifications prescribed in section six hundred and fifty-seven, and as nearly as may be, a proportionate number from each precinct in the county, and shall, within five days thereafter, furnish to the clerk of the district court of the county, or his deputy, a list of the names of the persons selected.

SEC. 659. [**Same—Duties of district clerk.**—The clerk or deputy clerk receiving the names, shall write the name of each person selected on a separate

SEC. 657. Colored men are competent. 2 Neb. 205. See ante p. 285.

SEC. 657 a. Being "an act concerning the competency of jurors in certain cases," taking effect June 1, 1877. Laws p. 16. See also 5 Neb. 453.

SEC. 658. Same persons should not be selected for successive terms of court. 9 Neb. 521. Duties of commissioners in summoning juries. Id.

SEC. 659. See sec. 465 a, Criminal Code, post.

ticket, and place the whole number of tickets in a box, or other suitable and safe receptacle, and shall preserve the list of names furnished by the commissioners, in the files of his office.

**Sec. 660. [How drawn.]**—The clerk of the district court or his deputy, and the sheriff, or if there is no sheriff, the deputy sheriff, or if there is no deputy sheriff, the coroner of the county, shall, at least ten days before the first day of the session of the district court, meet together and draw by lot out of the box or receptacle wherein shall be kept the tickets aforesaid, sixteen names, and the persons whose names are drawn shall be grand jurors; and the clerk and sheriff shall then draw twenty-four additional names, and the persons whose names are drawn shall be the petit jurors.

**Sec. 661. [Same—Order to sheriff.]**—The clerk shall, on the day of the drawing aforementioned, issue an order to the sheriff, deputy sheriff, or coroner, as the case may be, commanding him to summon the persons whose names are drawn, to appear before the district court, at or before the hour of eleven o'clock, on the morning the first day of the term (stating in the order, the day of the week and month, and the place of the sitting of the court,) to serve as grand jurors, and a like order commanding the sheriff, deputy sheriff, or coroner to summon the petit jurors.

**Sec. 662. [How summoned.]**—The sheriff, deputy sheriff, or coroner having received the order, shall, at least five days before the first day of the session of the court, serve upon each person whose name was selected and drawn as a grand juror, a true copy of the command, except that the copy shall contain only the name of the grand juror served, and not the name of any other grand juror; and the sheriff, deputy sheriff, or coroner, shall, at least five days before the first day of the session of the court, in like manner summon each person whose name was selected and drawn as petit juror; and such service shall be made by reading or delivering the copy to the person to be summoned, or by leaving a copy at his residence.

**Sec. 663. [Appearance.]**—Each grand juror and petit juror summoned shall appear before the court on the day and at the hour specified in the summons, and shall not depart without leave of court.

**Sec. 664. [Additional jurors.]**—Whenever the proper officers fail to summon a grand or petit jury, or when all persons summoned as grand or petit jurors do not appear before the district courts, or whenever at any general or special term, or at any period of a term for any cause there is no panel of grand jurors or petit jurors, or the panel is not complete, said court may order the sheriff, deputy sheriff, or coroner to summon without delay, good and lawful men, having the qualifications of jurors, and each person summoned, shall forthwith appear before the court, and if competent, shall serve on the grand jury or petit jury as the case may be, unless such person may be excused from serving, or lawfully challenged.

**Sec. 665. [Not summoned when.]**—No person shall be summoned as a juror in any district court of this state more than once in two years, and it shall be sufficient cause of challenge to any juror called to be sworn in any cause that he has been summoned and attended said court as a juror, at any term of said court held within two years prior to the time of such challenge; *Provided*, No finding verdict or inquest returned by any jury shall be invalidated or set aside, because a member of such jury served as a grand or petit juror within the two (2) years immediately preceding such verdict or inquest. [Amended March 1. Took effect June 1, 1881.]

**Sec. 666. [Officer's return to order.]**—The sheriff, deputy sheriff, or

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Sec. 664. Vacancies in grand jury cannot be filled by those summoned as petit jurors. 1 Neb. 398. Special venire for tallies not necessary. 4 Neb. 230. Court should not designate certain persons to fill panel. 5 Neb. 379. and see 7 Neb. 330. In calling term of court judge has no authority to order sheriff to summon juries. He must direct whether they shall be summoned. If required they must be drawn as for regular terms. 9 Neb. 164. Objection to mode of selecting jurors must be made by challenge or plea in abatement. Id. Objections to jurors. 4 Neb. 581. 7 Neb. 390. See note to sec. 468, Criminal Code, post.



coroner, having received the order or service issued by the clerk, shall make return thereof with his proceedings, to the clerk, before the session of the court.

**SEC. 667. [Failure to appear—Neglect of officers—Penalty.]**—If any person summoned to appear as grand juror or petit juror, fails, refuses or neglects to appear, such person shall be considered guilty of contempt of the court, and may be fined by the court in any sum not less than five dollars nor more than fifty dollars; and if any person, when a second order or attachment is issued, neglects or refuses to appear, such person may be fined as above provided, and imprisoned by the court not longer than ten days in the county jail; and if the county commissioners in any county neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, such persons so offending may be fined by the court not less than five dollars nor more than fifty dollars; and if any clerk of the district court, or deputy clerk, or sheriff, deputy sheriff, or coroner, neglects or fails to perform the duties imposed by this chapter, the person so offending shall be considered guilty of contempt of court, and may be fined by the court not less than five dollars nor more than fifty dollars; and if guilty of gross misconduct in office and contempt, may be imprisoned by the court not longer than thirty days in the county jail.

**SEC. 668. [Packing jury—Penalty.]**—If a sheriff or other officer, corruptly, or through favor or ill will, summon a juror, with the intent that such juror shall find a verdict for or against either party, or shall summon a grand juror from like motives, with intent that such grand juror shall or shall not find an indictment or presentment against any particular individual, he shall be fined not exceeding five hundred dollars, and forfeit his office, and be forever disqualified from holding any office in this state.

#### TITLE XX.—CONTEMPTS.

**SEC. 669. [Power of court to punish—When.]**—Every court of record shall have power to punish by fine and imprisonment, or by either, as for criminal contempt, persons guilty of any of the following acts: *First.* Disorderly, contemptuous or insolent behavior towards the court, or any of its officers, in its presence. *Second.* Any breach of the peace, noise or other disturbance tending to interrupt its proceedings. *Third.* Wilful disobedience of, or resistance wilfully offered to any lawful process or order of said court. *Fourth.* Any wilful attempt to obstruct the proceedings, or hinder the due administration of justice in any suit, proceedings or process pending before the courts. *Fifth.* The contumacious and unlawful refusal of any person to be sworn or affirmed as a witness, and when sworn or affirmed, the refusal to answer any legal and proper interrogatory. [R. S. 512. G. S. 645.]

**SEC. 670. [How punished.]**—Contempts committed in the presence of the court may be punished summarily; in other cases, the party, upon being brought before the court, shall be notified of the accusation against him, and have a reasonable time to make his defense.

**SEC. 671. [Same—Indictment.]**—Persons punished for contempt under the preceding provisions, shall nevertheless be liable to indictment, if such contempt shall amount to an indictable offense; but the court before which the conviction shall be had, may, in determining the punishment, take into consideration the punishment before inflicted in mitigation of the sentence.

**SECS. 672, 673, 674. [Omitted. Same provisions secs. 1096, 1097, 1098.]**

#### TITLE XXI.\*—APPEALS FROM THE DISTRICT TO THE SUPREME COURT.

**SEC. 675. [Appeals in equity.]**—**SEC. 1.** That in actions in equity either party may appeal from the judgment or decree rendered or final order made by

\*NOTE.—This title, inclusive of secs. 675–688, R. S. 513, omitted, being repealed by Laws 1867, p. 71. See 3 Neb. 453.

**SEC. 675.** "An act to provide for appeals in actions in equity." G. S. 715. Courts cannot enlarge time

the district court, to the supreme court of the state; the party appealing shall within six months after the date of the rendition of the judgment or decree, or the making of the final order, procure from the clerk of the district court and file in the office of the clerk of the supreme court, a certified transcript of the proceedings had in the cause in the district court, containing the pleadings, the judgment or decree rendered or final order made therein, and all the depositions, testimony and proofs offered in evidence on the hearing of the cause, and have the said cause properly docketed in the supreme court; and on failure thereof, the judgment or decree rendered or the final order made in the district court shall stand and be proceeded in as if no appeal had been taken.

**SEC. 676. [Testimony reduced to writing.]**—SEC. 2. In actions hereinafter heard and determined, when the proofs and testimony are taken orally before the court on the hearing of the cause, the same shall be reduced to writing, in form similar to bills of exception, and be allowed by the judge hearing the cause, as in cases at law.

**SEC. 677. [Undertaking.]**—SEC. 3. No appeal in any case in equity, now pending and undetermined, or which shall hereafter be brought shall operate as a supersedeas, unless the appellant, or appellants, shall within twenty days next after the rendition of such judgment or decree, or the making of such final order, execute to the adverse party a bond with one or more sureties as follows: *First.* When the judgment, decree, or final order appealed from directs the payment of money, the bond shall be in double the amount of the judgment, decree, or final order, conditioned that the appellant, or appellants, will prosecute such appeal without delay, and pay all condemnation money and costs which may be found against him, or them, on the final determination of the cause in the supreme court. *Second.* When the judgment, decree, or final order directs the execution of a conveyance or other instrument, the bond shall be in such sum as shall be prescribed by the district court, or judge thereof in vacation, conditioned that the appellant, or appellants, will prosecute such appeal without delay, and will abide and perform the judgment or decree rendered or final order which shall be made by the supreme court in the cause. *Third.* When the judgment, decree, or order directs the sale or delivery of possession of real estate, the bond shall be in such sum as the court, or judge thereof in vacation, shall prescribe, conditioned that the appellant, or appellants, will prosecute such appeal without delay, and will not during the pendency of such appeal commit, or suffer to be committed, any waste upon such real estate.

**SEC. 678. [Same—Approval—Supersedeas.]**—SEC. 4. Before any bond executed as aforesaid shall operate as a supersedeas, the execution of the same, and the sufficiency of the sureties therein, must be approved by the clerk of the court in which the judgment or decree was rendered or the final order was made.

## **TITLE XXII.—BOATS. [Repealed. Gen. Stat. 713.]**

## **TITLE XXIII.—INFORMATIONS.**

**SEC. 704. [Filed against whom.]**—An information may be filed against any person unlawfully holding or exercising any public office or franchise within this state, or any office in any corporation created by the laws of this state, or when any public officer has done or suffered any act which works a forfeiture of his office, or when any persons act as a corporation within this state without being authorized by law, or if, being incorporated, they do or omit acts which

within which appeal shall be perfected. 1 Neb. 113. 2 Neb. 65. 4 Neb. 131. If finding is not disputed and only error complained of is one of law, testimony need not be brought up. 4 Neb. 55. [See note to sec. 311.] This act has no retrospective operation. 4 Neb. 557, 573. The remedy by appeal is not exclusive. Equitable action may still be reviewed on error. 4 Neb. 557. 7 Neb. 9. But to review an action in equity on error there must have been a motion for a new trial. 7 Neb. 9. Appeal brings case up for trial *de novo*. 4 Neb. 583. Appeal lies, when. 5 Neb. 473. 6 Neb. 136. 8 Neb. 299. Does not lie, when. 4 Neb. 564. 5 Neb. 193. 7 Neb. 262. 10 Neb. 441. Practice on appeal. 7 Neb. 501. 8 Neb. 267. 9 Neb. 11. 10 Neb. 17, 320. 8 Neb. 306.  
**SEC. 677.** Amount of bond discretionary. 8 Neb. 306.

amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law.

SEC. 705. [**By whom.**—Such information may be filed by the prosecuting attorney of the proper county whenever he deems it his duty so to do.

SEC. 706. [**Same.**—He must file such information when directed to do so by the governor, the legislative assembly, or the district court.

SEC. 707. [**Petition—Contents.**—Such information shall consist of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the court which shall stand for an original petition.

SEC. 708. [**Same—Filing—Summons.**—Such statement shall be filed in the clerk's office, and summons issued and served in the same manner as hereinbefore provided for the commencement of actions in the district court.

SEC. 709. [**Answer.**—The defendant shall appear and answer such information in the usual way, and issue being joined it shall be tried in the ordinary manner.

SEC. 710. [**Claimant—Rights of parties determined.**—When the defendant is holding an office to which another is claiming the right, the information should set forth the name of such claimant, and the trial must, if practicable, determine the rights of contesting parties.

SEC. 711. [**Judgment of claimant.**—If judgment be rendered in favor of such claimant, he shall proceed to exercise the functions of the office, after he has qualified as required by law.

SEC. 712. [**Same—Delivery of books and papers.**—The court, after such judgment, shall order the defendant to deliver over all books and papers in his custody or under his control belonging to said office.

SEC. 713. [**Same—Damages.**—When the judgment has been rendered in favor of the claimant, he may at any time within one year thereafter bring suit against the defendant and recover the damages he has sustained by reason of the act of the defendant.

SEC. 714. [**Several claimants.**—When several persons claim to be entitled to the same office or franchise, an information may be filed against all or any portion thereof, in order to try their respective rights thereto.

SEC. 715. [**Ouster.**—If the defendant be found guilty of unlawfully holding or exercising any office, franchise, or privilege, or if a corporation be found to have violated the law by which it holds its existence, or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted, and altogether excluded from such office, franchise, or privilege, and also that he pay the costs of the proceeding.

SEC. 716. [**Judgment in other cases.**—If the defendant be found to have exercised merely certain individual powers and privileges to which he was not entitled, the judgment shall be the same as above directed, but only in relation to those particulars in which he is thus exceeding the lawful exercise of his rights and privileges.

SEC. 717. [**Title of cause—Costs.**—When an information is upon the relation of a private individual, it shall be so stated in the petition and proceedings, and such individual shall be responsible for costs in case they are not adjudged against the defendant. In other cases the title of the cause shall be the same as in a criminal prosecution, and the payment of costs shall be regulated by the same rule.

SEC. 718. [**Same.**—In case judgment is rendered against a pretended, but not real, corporation, the costs may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

SEC. 719. [**Dissolved corporation—Trustees.**—If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders.

SEC. 715. Court in its discretion may grant supersedeas on judgment of ouster. But its refusal to do so cannot be reviewed on error. 10 Neb. 248.

**SEC. 720. [Same—Bond.]**—Such trustees shall enter into bond, in such a penalty, and with such security as the court may approve, conditioned for the faithful discharge of their trust.

**SEC. 721. [Same—Suit on bond.]**—Suit may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties.

**SEC. 722. [Trustees—Duties.]**—The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled.

**SEC. 723. [Books, etc., of corporation.]**—The court shall, upon an application for that purpose, order any officer of such corporation, or any other person having possession of any of the effects, books or papers of the corporation in any wise necessary for the settlement of its affairs, to deliver up the same to the trustees.

**SEC. 724. [Trustees—Inventory.]**—As soon as practicable, after their appointment, the trustees shall make and file in the office of the clerk of the court, an inventory of all the effects, rights and credits which come to their possession or knowledge, the truth of which inventory shall be sworn to.

**SEC. 725. [Same—Act as executors.]**—They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders, respectively, to the extent of the effects which come to their hands, in the same manner as though they were the executors of a deceased person.

**SEC. 726. [Officers of corporations—Liability.]**—When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby.

**SEC. 727. [Contempt of court—Penalty.]**—Any person who, without good reason, refuses to obey any order of the court as herein provided, shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding five thousand dollars and imprisoned in the county jail until he comply with said order, and shall be further liable for the damages resulting to any person on account of his refusal to obey such order.

**SEC. 728. [Letters patent—Vacated.]**—A proceeding of this kind may be instituted, in the manner above contemplated, for the purpose of annulling or vacating any letters patent granted by the proper authorities of this state, where there is reason to believe that the same were obtained by fraud, or through mistake or ignorance of a material fact, or when the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters were granted, or have by any other means forfeited the interest acquired under the same.

#### **TITLE XXIV.—CHANCERY. [Repealed. 1867, 71. G. S. 707.]**

#### **TITLE XXV.—PROBATE COURT.**

#### **CHAPTER I. [Repealed. G. S. 271.]**

#### **CHAPTER II.—ADOPTION OF CHILDREN.**

**SEC. 796. [How consummated.]**—Whenever it may be desirable that any person or persons shall adopt the child of another, the same may be consummated in the manner hereinafter provided.

**SEC. 797. [Same—Proceedings.]**—The parents, guardians or other person or persons having lawful control or custody of any minor child, may make a statement in writing before the probate judge of the county where the person or persons desiring to adopt such child reside, that he she or they voluntarily relinquish all right to the custody of and power and control over such child (naming him or her), and all claim and interest in and to the services and wages of such child,

to the end that such child shall be fully adopted by the party or parties (naming them), desiring to adopt such child, which statement shall be signed and sworn to by the party making the same, before said probate judge, in the presence of at least two witnesses; and the person or persons desiring to adopt such child, shall also make a statement in writing, to the effect that he, she or they freely and voluntarily adopt such child (naming him or her), as their own, with such limitations and conditions as shall be agreed upon by the parties, which said statement shall also be signed and sworn to by the parties making the same before said probate judge, in the presence of at least two witnesses; *Provided*, In all cases where such child shall be of the age of fourteen years and upward, the written consent of such child shall be necessary to the validity of such proceeding; *And provided, further*, Whenever it shall be desirable the party or parties adopting such child may, by stipulations to that effect in such statement, adopt such child, and bestow upon him or her equal rights, privileges and immunities of children born in lawful wedlock, and such statement shall be filed with and recorded by said probate judge, in a book kept in his office for that purpose.

SEC. 798. [**Hearing—Notice.**].—And such probate judge shall appoint a time and place for the hearing of said matter, and shall give three weeks notice thereof to all persons who may be interested in said matter, by publication thereof in a newspaper published in said county, and in case no paper is published in said county, then the notice shall be published in a newspaper printed in this state, and of general circulation in said county.

SEC. 799. [**Decree.**].—At the time and place of the hearing of such matter, if said hearing shall not be adjourned, the said probate judge shall render a decree therein, in accordance with the conditions and stipulations of said statement; *Provided*, In case it shall appear to the satisfaction of said probate judge, that such proceedings are not for the best interest of the child or children, he may refuse to enter such decree, and the matter shall thereupon be dismissed.

SEC. 800. [**Same—Conclusive.**].—All decrees entered in such case in conformity with the provisions and requirements of this chapter, shall be conclusive upon all the persons interested in such proceedings or matter, and the child or children thus adopted shall take the surname of the person or persons adopting the same, and all relations of parent and child, agreeably to such stipulations and the decree of the probate court, shall attach, and such child or children, if so stated in such decree, shall be subject to the exclusive control and custody of such parent or parents, and shall possess and enjoy all the rights, privileges, inheritance, heirships, and immunities of children born in lawful wedlock.

SEC. 801. [**Fees.**].—The probate judge shall be entitled to charge the same fees for such services as now are or hereafter may be provided by law for like services in other cases.

## TITLE XXVI.—PARTITION.

SEC. 802. [**Petition.**].—When the object of the action is to effect the partition of real property among several joint owners, the petition must describe the property, and the several interests and estates of the several joint owners thereof, if known. All tenants in common, or joint tenants of any estate in land may be compelled to make or suffer partition of such estate or estates in the manner hereinafter prescribed. [Amended 1871, 112.]

SEC. 803. [**Same—Unknown owners.**].—If the number of shares or interests is known, but the owners thereof are unknown, or if there are or are supposed to be, any interests which are unknown, contingent or doubtful, these facts must be set forth in the petition with reasonable certainty.

SEC. 804. [**Lien holders—Parties.**].—Creditors having a specific or general lien upon all or any portion of the property may or may not be made parties, at the option of the plaintiff.

SEC. 802. Purchasing in outstanding title by one tenant in common. 1 Neb. 450. Accounting for rents and profits. 4 Neb. 362.

**SEC. 805. [Liens upon undivided interest.]**—If the lien is upon one or more undivided interests of any of the parties, it shall, after partition or sale, remain a charge upon those particular interests or the proceeds thereof. But the due proportion of costs is a charge upon those interests paramount to all other liens.

**SEC. 806. [Answer.]**—The answers of the defendants must state, among other things, the amount and nature of their respective interests. They may deny the interest of any of the plaintiffs, and by supplemental pleading, if necessary, may deny the interests of any of the other defendants.

**SEC. 807. [Reply.]**—Where there are two or more plaintiffs they may reply jointly, or either of them may reply to any or all the answers of the defendants.

**SEC. 808. [Issues.]**—Issues may thereupon be joined and tried between any of the contesting parties, the question of costs on such issues being regulated between the contestants agreeably to the principles applicable to other cases.

**SEC. 809. [Proof of title.]**—Each of the parties appearing, whether as plaintiff or defendant, must exhibit his documentary proof of title, if he has any, and must file the same, or copies thereof, with the clerk.

**SEC. 810. [Pleadings taken as true.]**—If the statements in the petition and answers are not contradicted in the manner aforesaid, or by the documentary proof exhibited as above required, they shall be taken as true.

**SEC. 811. [Judgment.]**—After all the shares and interests of the parties have been settled in any of the methods aforesaid, judgment shall be rendered confirming those shares and interests, and directing partition to be made accordingly.

**SEC. 812. [Referee to make partition.]**—Upon entering such judgment the court shall appoint referees to make partition into the requisite number of shares.

**SEC. 813. [Special allotments.]**—For good and sufficient reasons appearing to the court, the referees may be directed to allot particular portions of the land to particular individuals. In other cases the shares must be made as nearly as possible of equal value.

**SEC. 814. [Referees report.]**—If it appears to the referees that partition cannot be made without great prejudice to the owners, they shall so report to the court.

**SEC. 815. [Order of sale.]**—If satisfied with such report the court shall cause an order to be entered, directing the referees to sell the premises so situated and shall also fix the terms of sale.

**SEC. 816. [Referee—Security.]**—Before proceeding to sell, the referees shall each give security, to be approved by the court or judge thereof, conditioned for the faithful discharge of his duties. At any time thereafter the court may require further and better security.

**SEC. 817. [Sale—How conducted—Notice.]**—The same notice of sale shall be given as when lands are sold on execution by the sheriff, and the sale shall be conducted in like manner.

**SEC. 818. [Referees report of sale.]**—After completing said sale, the referees must report their proceedings to the court, with a description of the different parcels of land sold to each purchaser, and the price bid therefor, which report shall be filed with the clerk.

**SEC. 819. [Report of incumbrances by the clerk.]**—After making the order of sale as aforesaid, the court shall direct the clerk to report whether there be any general incumbrance by mortgage, judgment, or otherwise, upon any portion of the property.

**SEC. 820. [Same—By referee.]**—If deemed advisable, the court may ap-

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SEC. 809. When documentary proof not necessary. 2 Neb. 314.

SEC. 812. Referee may be appointed to take account of rents and profits, as well as three referees to make partition. 3 Neb. 92.

point a referee to inquire into the nature and amount of incumbrances, and report accordingly. From that report an appeal lies to the court.

SEC. 821. [**Same—Duties.**].—The referee shall give the parties interested at least five days notice of the time and place when he will receive proof of the amount of such incumbrances.

SEC. 822. [**Same—Proof.**].—In taking such proof he may receive, with other evidence, the affidavit of the parties interested.

SEC. 823. [**Incumbrances—Payment.**].—If any incumbrance be ascertained to exist, the proceeds of the sale of that portion, after the payment of costs, or so much thereof as is necessary, shall if the owner consent, be paid over to the incumbrancer.

SEC. 824. [**Same—Proceeds of sale.**].—If the owner object to the payment of such incumbrance, the money shall be retained or invested by order of the court to await final action in relation to its disposition, and notice thereof shall be forthwith given to the incumbrancer, unless he has already been made a party.

SEC. 825. [**Issue between owner and incumbrancer.**].—The court may direct an issue to be made up between the incumbrancer and the owner, which shall be decisive of their respective rights.

SEC. 826. [**Estates for life or years.**].—If an estate for life or years be found to exist as an incumbrance upon any part of said property, and if the parties cannot agree upon the sum in gross which they will consider an equivalent for such estate, the court shall direct the avails of the incumbered property to be invested and the proceeds to be paid to the incumbrancer during the existence of the incumbrance.

SEC. 827. [**Proceedings not delayed.**].—The proceedings in relation to the incumbrances shall not delay the distribution of the proceeds of other shares in respect to which no difficulties exist.

SEC. 828. [**Security from parties.**].—The court in its discretion may require all or any of the parties before they receive the moneys arising from any sale authorized in this title, to give satisfactory security, to refund such moneys with interest, in case it afterward appears that such parties were not entitled thereto.

SEC. 829. [**Sale—Confirmed—Conveyance.**].—If the sales aforesaid be approved and confirmed by the court, an order shall be entered directing the referees, or any two of them, to execute conveyances pursuant to such sales. But no conveyance can be made until all the money is paid, without receiving from the purchaser a mortgage of the land so sold, or other equivalent security.

SEC. 830. [**Conveyance—Effect.**].—Such conveyances so executed, being recorded in the county where the premises are situate, shall be valid against all subsequent purchasers, and also against all persons interested at the time who were made parties to the proceedings in the mode pointed out by law.

SEC. 831. [**Proceeds of shares—Investment.**].—If the owner of any share thus sold has a husband or wife living, and if such husband and wife do not agree as to the disposition that shall be made of the proceeds of such sale, the court must direct it to be invested in real estate under the supervision of such person as it may appoint, taking the title in the name of the owner, of the share sold as aforesaid.

SEC. 832. [**Sale disapproved—Money returned.**].—If the sales are disapproved, the money paid and the securities given must be returned to the persons respectively entitled thereto.

SEC. 833. [**Partition—How made—Surveyor.**].—When a partition is deemed proper the referees must make out the shares by visible monuments, and may employ a competent surveyor and the necessary assistants to aid them.

SEC. 834. [**Referees report—Plat.**].—The report of the referees must be in writing, signed by at least two of them. It must describe the respective shares with reasonable particularity, and be accompanied by a plat of the premises.

**SEC. 835. [Shares drawn by lot].**—Unless the shares are allotted to their respective owners by the referees as hereinbefore contemplated, the clerk shall number the shares and then draw the names of the future owners by lot.

**SEC. 836. [Partition in part].**—When partition can be conveniently made of part of the premises, but not of all, one portion may be partitioned and the other sold as hereinafter provided.

**SEC. 837. [Report set aside].**—On good cause shown, the report may be set aside and the matter again referred to the same or other referees.

**SEC. 838. [Judgment].**—Upon the report of the referees being confirmed, judgment thereon shall be rendered that the partition be firm and effectual forever.

**SEC. 839. [Defendants, how served].**—The defendants may be served in the same manner as in ordinary civil action by summons, or by publication as provided in this code, and when all the parties in interest have been duly served, any of the proceedings herein prescribed shall be binding and conclusive upon them all. If only a portion of such parties be served, they only shall be bound by such proceedings. [Amended 1871, 112.]

**SEC. 840. [Judgment—Effect].**—The judgment of partition shall be presumptive evidence of title in all cases, and as between the parties themselves it is conclusive evidence thereof, subject, however, to be defeated by proof of a title paramount to, or independent of, that under which the parties held as joint tenants or tenants in common.

**SEC. 841. [Costs].**—All the costs of the proceedings in partition shall be paid in the first instance by the plaintiffs, but eventually by all the parties in proportion to their interests, except those costs which are created by contests above provided for.

**SEC. 842. [Incumbrancers—Appearance].**—Any person claiming to hold an incumbrance upon any portion of the property involved in the suit, may, in default of the owner, appear and act as his representative in any of the proceedings under this title.

**SEC. 843. [Contingent interests].**—Persons having contingent interests in such property may be made parties to the proceedings, and the proceeds of the property so situated (or the property itself, in case of partition), shall be subject to the order of the court until the right becomes fully vested.

**SEC. 844. [Share of absent owner].**—The ascertained share of any absent owner shall be retained, or the proceeds invested for his benefit.

## TITLE XXVII.—FORECLOSURE OF MORTGAGES BY ACTION.

**SEC. 845. [Petition—Where filed].**—All petitions for the foreclosure or satisfaction of mortgages shall be filed in the district court in chancery where the mortgaged premises are situated.

**SEC. 846. [Sale—Decreed by court].**—Whenever a petition shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the cost of suit.

**SEC. 847. [Decree for deficiency].**—When a petition shall be filed for the satisfaction of a mortgage, the court shall not only have the power to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt

SEC. 845. It seems that the remedy of strict foreclosure is not taken away by the statute. 1 Neb. 454. But see 2 Neb. 27. 6 Neb. 362. Redemption. 1 Neb. 302. 4 Neb. 404. 7 Neb. 454. 10 Neb. 428. Defenses. 2 Neb. 278. 5 Neb. 432. 10 Neb. 236, 427. Rights of mortgagors. 2 Neb. 27. 4 Neb. 318. 7 Neb. 452. 8 Neb. 461. Rights of mortgagees and priority of liens. 4 Neb. 403. 7 Neb. 408. 8 Neb. 461, 487. 9 Neb. 476. 10 Neb. 122. Rights of purchaser. 8 Neb. 235. Parties. 1 Neb. 291. 4 Neb. 403. 5 Neb. 200. 8 Neb. 235, 469. 9 Neb. 120. 10 Neb. 378. Covenant. 9 Neb. 284. Mortgage defined. 2 Neb. 23. 4 Neb. 318. 6 Neb. 389. 7 Neb. 4. Jurisdiction. 10 Neb. 114. Pleadings and decree. 10 Neb. 321. And see 1 Neb. 436.



that may remain unsatisfied after a sale of the mortgaged premises, in the cases in which such balance is recoverable at law; and for that purpose may issue the necessary execution, as in other cases, against other property of the mortgagor.

SEC. 848. [**Bar to action for debt.**—After such petition shall be filed, while the same is pending, and after a decree rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

SEC. 849. [**Other security—Additional parties.**—If the mortgage debt be secured by the obligation or other evidence of debt of any other person besides the mortgagor, the complainant may make such person a party to the petition, and the court may decree payment of the balance of such debt remaining unsatisfied after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

SEC. 850. [**Petition—Allegation as to debt.**—Upon filing a petition for the foreclosure or satisfaction of a mortgage, the complainant shall state therein whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected and paid.

SEC. 851. [**Judgment at law—Bar to foreclosure.**—If it appear that any judgment has been obtained in a suit at law for the money demanded by such petition, or any part thereof, no proceedings shall be had in such case, unless, to an execution against the property of the defendant in such judgment, the sheriff or other proper officer shall have returned that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution except the mortgaged premises.

SEC. 852. [**Sales—By whom made.**—All sales of mortgaged premises under a decree in chancery shall be made by a sheriff, or some other person authorized by the court in the county where the premises or some part of them are situated, and in all cases where the sheriff shall make such sale he shall act in his official capacity and he shall be liable on his official bond for all his acts therein, and shall receive the same compensation as is provided by law for like services upon sales under speculation [execution]. [Amended 1875, 42. Took effect Feb. 25, 1875.]

SEC. 853. [**Deed to purchaser—Effect.**—Deeds shall thereupon be executed by such sheriff, which shall vest in the purchaser the same estate that would have vested in the mortgagee if the equity of redemption had been foreclosed, and no other or greater; and such deeds shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs.

SEC. 854. [**Avails of sale—Application.**—The proceeds of every sale made under a decree in chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded, and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

SEC. 855. [**Surplus—Disposition.**—If such surplus, or any part thereof, shall remain in said court for the term of three months without being applied for, the court may direct the same to be put out at interest under the direction of the court, for the benefit of the defendant, his representatives, or assigns, to be paid to them by the order of such court.

SEC. 856. [**Petition dismissed on payment.**—Whenever a petition

SEC. 848. Object of section explained. 9 Neb. 402.

SEC. 850. Petition, where action has been commenced on note. 6 Neb. 363.

SEC. 851. Section is for benefit of debtor. As between senior and junior mortgagees, see 7 Neb. 408.

SEC. 852. Original section cited 4 Neb. 292. *It seems* that an order of sale is not necessary. Decree is sufficient warrant of authority. 3 Neb. 177. But see sec. 477 b, ante p. 590. 4 Neb. 403. 7 Neb. 453. 9 Neb. 258. And sec. 5, chap. 28, ante p. 275.

SEC. 853. See note to sec. 500. 7 Neb. 453.

SECS. 856, 857. But where mortgage provides that upon failure to make one payment when it becomes due the whole debt shall be due, the court is bound to give effect to such contract. 6 Neb. 181. 10 Neb. 183.

shall be filed for the satisfaction or foreclosure of any mortgage, upon which there shall be due any interest on any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the petition shall be dismissed upon the defendant bringing into court, at any time before the decree of sale, the principal and interest due, with costs.

SEC. 857. [**Decree—Subsequent default.**—]If, after a decree for sale, entered against a defendant in such case, he shall bring into court the principal and interest due, with costs, the proceedings in the suit shall be stayed, but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of any portion or installment of the principal, or any interest thereafter to become due.

SEC. 858. [**Reference—Situation of premises.**—]If the defendant shall not bring into court the amount due, with costs, or if for any other cause a decree shall pass for the complainant, the court may direct a reference to a sheriff to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony, and if it shall appear that the same can be sold in parcels, without injury to the parties, the decree shall direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on such mortgage, with costs, and such decree shall remain a security for any subsequent default.

SEC. 859. [**Further order of court.**—]If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree in the payment of any portion or installment of the principal, or any interest due upon such mortgage, the court may, upon the petition of the complainant, by a further order, founded upon such first decree, direct a sale of so much of the mortgaged premises to be made, under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition and the subsequent proceedings thereon, and the same proceedings may be had as often as a default shall happen.

SEC. 860. [**Sale of entire property.**—]If, in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises accordingly.

SEC. 861. [**Same—Proceeds—Application.**—]In such case the proceeds of such sale shall be applied as well to the interest, portion, or installment of the principal due as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale, and if such residue do not bear interest, then the court may direct the same to be paid with a rebate of the legal interest, for the time during which such residue shall not be due and payable, or the court may direct the balance of the proceeds of such sale, after paying the sum due, with costs, to be put out at interest, for the benefit of the complainant, to be paid to him as the installments or portions of the principal or interest may become due, and the surplus for the benefit of the defendant, his representatives, or assigns, to be paid to them on the order of the court.

## TITLE XXVIII.—ARBITRATION.

SEC. 862. [**Controversies submitted.**—]All controversies which might be the subject of civil actions, may be submitted to the decision of one or more arbitrators as hereinafter provided.

SEC. 863. [**Written agreement to submit.**—]The parties themselves, or those persons who might lawfully have controlled a civil action in their behalf for the same subject matter, must sign a written agreement specifying particularly what demands are to be submitted, the names of the arbitrators, and the court by which the judgment on their award is to be rendered.

SEC. 864. [**Acknowledgment before justice.**—]They shall then ap-

SEC. 862. The statutory mode is not exclusive. An award upon a submission, valid at common law may support an action. 3 Neb. 389.

pear before some justice of the peace of the county and acknowledge the instrument by them signed to be their free act and deed.

SEC. 865. [**Demands submitted.**].—The submission may be of some particular matters or demands, or of all demands which the one party has against the other, or of all mutual demands on both sides.

SEC. 866. [**Submission by order of court.**].—A submission to arbitrators of the subject matter of a suit may also be made by an order of court, upon an agreement of parties, after suit is commenced.

SEC. 867. [**Rules applicable.**].—All the rules prescribed by law in cases of referees are applicable to arbitrators, except as herein otherwise expressed, or except as otherwise agreed upon by the parties.

SEC. 868. [**Revocation of submission.**].—Neither party shall have the power to revoke the submission without the consent of the other.

SEC. 869. [**Default in appearance.**].—If either party neglect to appear before the arbitrators, after due notice, they may nevertheless proceed to hear and determine the cause upon the evidence which is produced before them.

SEC. 870. [**Award—When made.**].—If the time within which the award is to be made is fixed in the submission, no award made after that time shall have any legal effect, unless made upon a recommitment of the matter by the court to which it is reported.

SEC. 871. [**Same—Filing.**].—If the time of filing the award is not fixed in the submission, it must be filed within one year from the time such submission is signed and acknowledged, unless by mutual consent the time is prolonged.

SEC. 872. [**Same—In writing.**].—The award must be in writing, and shall be delivered by one of the arbitrators to the court designated in the agreement, or it may be enclosed and sealed by them and transmitted to the court, and not opened until the court so orders.

SEC. 873. [**Same—Docketing—Notice.**].—The cause shall be entered on the docket of the court at the term to which the award is returned, and shall be called up and acted upon in its order. But the court may require actual notice to be given to either party, when it appears necessary and proper, before proceeding to act on the award.

SEC. 874. [**Same—Rejection by court.**].—The award may be rejected by the court for any legal and sufficient reasons, or it may be recommitted for a rehearing to the same arbitrators, or any others agreed upon by the parties.

SEC. 875. [**Same—Effect—Judgment.**].—When the award has been confirmed, it shall be filed and entered on the record, and shall have the same force and effect as the verdict of a jury. Judgment may be entered and execution issued accordingly.

SEC. 876. [**Appeal.**].—When an appeal is taken from such judgment, copies of the submission and award, together with all affidavits, shall be returned to the supreme court.

SEC. 877. [**Costs.**].—If there is no provision in the submission respecting costs, arbitrators may award them at their discretion.

SEC. 878. [**Fees.**].—The compensation of the arbitrators shall be two dollars per day, for the time actually and necessarily spent, unless the court fix a less amount; and the fees of the justice of the peace shall be twenty-five cents for making out the agreement of submission (in case he does so), and the like amount for taking and certifying the acknowledgment thereto.

SEC. 879. [**Construction of act.**].—Nothing herein contained shall be construed to affect in any manner the control of the district court over the parties, the arbitrators or their award, nor to impair or affect any action upon an award, or upon any bond or other engagement to abide an award.

SEC. 872. An award must state facts found, and conclusions of law separately. 1 Neb. 459.

SEC. 873. Giving of notice is a matter of discretion. 3 Neb. 228. Defenses. 6 Neb. 87. Arbitrators may be witnesses. Id. 89. A party seeking to avoid award for fraud, etc., must set forth facts on which he bases his belief. 4 Neb. 543. If he appeals he must preserve evidence by bill of exceptions. Id.

## TITLE XXIX.—GENERAL PROVISIONS.

SEC. 880. [**Process.**—The style of all process shall be, "The State of Nebraska, \_\_\_\_\_ county." It shall be under the seal of the court from whence the same shall issue, shall be signed by the clerk, and dated the day it issued. [Const. sec. 24, Art. VI.]

SEC. 881. [**When sheriff party.**—An order for a provisional remedy or any other process, in an action wherein the sheriff is a party, or is interested, shall be directed to the coroner. If both these officers are interested, the process shall be directed to and executed by a person appointed by the court or judge.

SEC. 882. [**Service by authorized person.**—The court or judge, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which the sheriff has. The person may be appointed on the motion of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the fees allowed to the sheriff for similar services.

## DUTIES OF CLERKS.

SEC. 882. [**Issuing process—Precipe.**—All writs and orders for provisional remedies and process of every kind, shall be issued by the clerks of the several courts. Before they shall be issued, a precipe shall be filed with the clerk, demanding the same; which precipe shall be for the direction of the clerk, and not material to the papers in the case after the issuing of such writ or process.

SEC. 884. [**Filing papers.**—It is the duty of the clerk of each of the courts, to file together and carefully preserve in his office, all papers delivered to him for that purpose, in every action or special proceeding.

SEC. 885. [**Same—Endorsement of date.**—He shall endorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.

SEC. 886. [**Docket entry of persons summoned.**—He shall, upon the return of every summons served, enter upon the docket the name of the defendant or defendants summoned, and the day of the service upon each one. The entry shall be evidence of the service of the summons, in case of the loss thereof.

SEC. 887. [**Records and books.**—He shall keep the records and books and papers appertaining to the court, and record its proceedings.

SEC. 888. [**Article 8 title 9 applicable.**—The provisions of article eight, title nine, of this code, prescribing the duties of clerks of the district court, shall, as far as they are applicable, apply to the clerks of other courts of record.

SEC. 889. [**General powers and duties.**—The clerk of each of the courts shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law. In the performance of his duty he shall be under the direction of his court.

## DUTIES OF SHERIFFS.

SEC. 890. [**Endorsement of receipt on process.**—The sheriff shall endorse upon every summons, order of arrest, or for the delivery of property, or of attachment or injunction, the day and the hour it was received by him.

SEC. 891. [**Execution of process—Penalty.**—He shall execute every summons, order, or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court that he was prevented by inevitable accident from so doing, he shall be amerced by the court in a sum not exceeding one thousand dollars, and shall be liable to the action of any person aggrieved by such failure.

SEC. 892. [**General powers and duties.**—The sheriff shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law.

## MISCELLANEOUS PROVISIONS.

**SEC. 893. [Acts performed by deputy.]**—Any duty enjoined by this code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy.

**SEC. 894. [Oaths—Affirmations.]**—Whenever an oath is required by this code, the affirmation of a person conscientiously scrupulous of taking an oath, shall have the same effect.

**SEC. 895. [Time—Computation—Sunday.]**—The time within which an act is to be done as herein provided, shall be computed by excluding the first day and including the last; if the last day be Sunday, it shall be excluded.

**SEC. 896. [Jury trial—Party in default.]**—Section four hundred and thirty-two shall not be construed to impair the right of a party to a jury, if he appear at the trial by himself or attorney, and demand the same.

**SEC. 897. [Sureties—Proof of qualification.]**—The ministerial officer, whose duty it is to take security in an undertaking provided for by this code, shall have the right to require the person offered as surety to make an affidavit of his qualifications, which affidavit may be made before such officer. The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security.

**SEC. 898. [Same—Qualifications.]**—The surety in every undertaking provided for by this code, must be a resident of this state, and worth double the sum to be secured, beyond the amount of his debts, and have property liable to execution in this state, equal to the sum to be secured. Where there are two or more sureties in the same undertaking, they must in the aggregate have the qualifications prescribed in this section.

**SEC. 899. [Court rules—Revision by supreme court.]**—The judges of the supreme court shall, during the month of the first January after this code shall take effect, and every two years thereafter, meet at the capitol of the state, and revise their general rules, and make such amendments thereto as may be necessary to carry into effect the provisions of this code; and they shall make such further rules consistent therewith, as they may deem proper. The rules so made shall apply to the supreme court and the district courts.

**SEC. 900. [Application of code to pending suits.]**—The provisions of this code do not apply to proceedings in actions or suits pending when it takes effect. They shall be conducted to final judgment or decree, in all respects as if it had not been adopted; but the provisions of this code shall apply after a judgment, order, or decree heretofore or hereafter rendered, to the proceedings to enforce, vacate, modify, or reverse it.

**SEC. 901. [Rights secured by existing laws.]**—Rights of civil action given or secured by existing laws, shall be prosecuted in the manner provided by this code, except as provided in the following section. If a case ever arise in which an action for the enforcement or protection of a right, or the redress or prevention of a wrong, cannot be had under this code, the practice heretofore in use may be adopted so far as may be necessary to prevent a failure of justice.

**SEC. 902. [Proceedings not affected by code.]**—Until the legislature shall otherwise provide, this code shall not affect proceedings on *habeas corpus*, *quo warranto*, or to assess damages for private property taken for public uses; nor proceedings under the statutes for the settlement of estates of deceased persons; nor proceedings under statutes relating to dower, divorce, or alimony, or to establish or set aside a will; nor proceedings under statutes relating to apprentices, arbitration, bastardy, or insolvent debtors; nor any special statutory remedy not heretofore obtained by action; but such proceedings may be prosecuted under the code, whenever it is applicable.

SEC. 895. Applicable to inferior courts. 8 Neb. 362.

SEC. 897. Clerk of court is a "ministerial officer" and liable for damages occasioned by his "negligently and carelessly" taking insufficient security. *Atter*, if he exercises a reasonable degree of care. 5 Neb. 235.

**SEC. 903. [Proceedings under statutory actions.]**—Where, by general or special statute, a civil action, legal or equitable, is given, and the mode of proceeding therein is prescribed, this code shall not affect the proceedings under such statute, until the legislature shall otherwise provide; but in all such cases, as far as it may be consistent with the statute giving such action, and practicable under this code, the proceedings shall be conducted in conformity thereto. Where the statute designates by name or otherwise the kind of action, but does not prescribe the mode of proceeding therein, such action shall be commenced and prosecuted in conformity to this code; where the statute gives an action, but does not designate the kind of action, or prescribe the mode of proceeding therein, such action shall be held to be the civil action of this code, and proceeded in accordingly.

## TITLE XXX.—JUSTICES OF THE PEACE.

### CHAPTER I.—JURISDICTION.

**SEC. 904. [Limited to county.]**—The jurisdiction of justices of the peace in civil cases shall, unless otherwise directed by law, be limited to the county wherein they may have been elected, and where they shall reside.

**SEC. 905. [Subject matter.]**—Justices of the peace, within and co-extensive with their respective counties, shall have jurisdiction and authority: *First.* To administer an oath or affirmation authorized or required by law to be administered. *Second.* To take acknowledgment of deeds, mortgages, and other instruments of writing. *Third.* To solemnize marriages. *Fourth.* To issue subpoena for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions. *Fifth.* To try the action for forcible entry and detention, or the detention only, of real property. *Sixth.* To proceed against security for costs and bail for the stay of execution on their dockets. *Seventh.* To issue attachments, and proceed against the goods and effects of debtors in certain cases. *Eighth.* To issue executions on judgments rendered by them. *Ninth.* To proceed against constables, failing to make return, making false return, or failing to pay over money collected on execution, issued by such justice. *Tenth.* To try the right of the claimant to property taken in execution, or on attachment.

**SEC. 906. [Same—Trespass.]**—Justices of the peace shall have jurisdiction in actions for trespass on real estate, where the damages demanded for such trespass shall not exceed two hundred dollars, and no claim of title to such real estate set up by the defendant shall take away or affect the jurisdiction hereby given. [Amended Feb. 28. Took effect June 1, 1881.]

**SEC. 907. [No jurisdiction.]**—Justices shall not have cognizance of any action: *First.* To recover damages for an assault, or assault and battery. *Second.* In any action for malicious prosecution. *Third.* In actions against justices of the peace or other officers for misconduct in office, except in the cases provided for in this title. *Fourth.* In actions for slander, verbal or written. *Fifth.* In actions on contracts for real estate. *Sixth.* In actions in which the title to real estate is sought to be recovered, or may be drawn in question, except actions for trespass on real estate, which are provided for in this title.

### CHAPTER II.—COMMENCEMENT OF SUITS AND PROCEEDINGS IN ARREST AND ATTACHMENT.

**SEC. 908. [Action, how commenced.]**—Actions before justices of the peace are commenced by summons or by the appearance and agreement of the parties without summons. In the former the action is deemed commenced, upon delivery of the writ to the constable to be served; and he shall note thereon the time of receiving the same. In the latter case the action is deemed commenced at the time of docketing the case.

SEC. 905. Cited 5 Neb. 421. 9 Neb. 152, 473. Justice must hold his office in precinct for which he is elected. 4 Neb. 412.

SEC. 908. Cited 6 Neb. 411.

**SEC. 909. [Guardian—Appointment.]**—When a guardian to the suit is necessary, he must be appointed by the justice as follows: *First.* If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some friend. The consent in writing of the guardian to be appointed, and to be responsible for costs if he fail in the action, must be filed with the justice. *Second.* If the infant be defendant, the guardian must be appointed before trial. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed. Otherwise the justice may appoint any suitable person who gives such consent.

**SEC. 910. [Summons—Style—Contents.]**—The style of the summons shall be: "The state of Nebraska, ——— county;" it shall be dated the day it is issued, and signed by the justice issuing the same; be directed to the constable or sheriff of the proper county, (except in case a person be deputed to serve it, in which case it shall be directed to such person); must contain the names of the defendant or defendants, if known, and if unknown, give a description of him or them, and command the officer, or person serving the same, to summon the defendant or defendants to appear before such justice, at his office, in ——— county, at a time specified therein; and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him. There shall be endorsed on the writ, the amount for which the plaintiff will take judgment if the defendant fail to appear. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

**SEC. 911. [Same—Service—Returnable.]**—The summons must be returnable not more than twelve days from its date, and must, unless accompanied with an order to arrest, be served at least three days before the time of appearance, by delivering a copy of the summons, with the endorsement thereon, (certified by the constable or person serving the same to be a true copy), to the defendant, or leaving the same at his usual place of residence; *Provided*, That an acknowledgment on the back of the summons, or the voluntary appearance of a defendant is equivalent to service.

**SEC. 912. [Same—Service on corporation.]**—A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk or managing agent; or if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof.

**SEC. 913. [Same—Insurance company.]**—When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

**SEC. 914. [Same—Foreign corporation.]**—When the defendant is a foreign corporation, having a managing agent in this state, the service may be upon such agent.

**SEC. 915. [Same—Minors.]**—When the defendant is a minor under the age of fourteen years, the service must be upon him and upon his guardian or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults.

#### APPEARANCE.

**SEC. 916. [Parties entitled to one hour.]**—The parties are entitled to one hour in which to appear, after the time mentioned in the summons for appear-

SEC. 910. See note to sec. 64, ante p. 538. 9 Neb. 123.

SEC. 911. See note to secs. 69, 72, ante pp. 538, 539. 9 Neb. 108, 304.

ance, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present, is engaged in the trial of another cause. In such case, the justice may postpone the time of appearance until the close of such trial.

#### ARREST BEFORE JUDGMENT.

**SEC. 917. [Grounds for order.]**—An order for the arrest of the defendant in a civil action, shall be made by the justice of the peace before whom the same is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, made before any person authorized by law to administer oaths, stating the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and establishing one or more of the following particulars: *First.* That the defendant has removed or begun to remove any of his property out of the county, with the intent to defraud his creditors. *Second.* That the defendant has begun to convert his property, or any part thereof, into money, for the purpose of defrauding his creditors. *Third.* That he has property or rights in action which he fraudulently conceals. *Fourth.* That he has assigned, removed, or disposed of, or begun to assign, remove, or dispose of his property, or any part thereof, with intent to defraud his creditors. *Fifth.* That the defendant fraudulently contracted the debt or incurred the obligation for which suit is about to be brought. The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars.

**SEC. 918. [Order—When made.]**—The order of arrest may be made to accompany the summons, or at any time afterwards, before judgment.

**SEC. 919. [Undertaking.]**—The order of arrest shall not be issued by a justice of the peace until there has been executed by the plaintiff, if a resident freeholder of the county where the suit is brought, otherwise by one or more sufficient sureties of the plaintiff, a written undertaking, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained, not exceeding double the amount of the plaintiff's claim, stated in the affidavit.

**SEC. 920. [Order—Contents—Requirements.]**—The order of arrest shall be addressed and delivered, with a copy of the affidavit, to a constable or sheriff of the proper county; it shall state the names of the parties, the amount of the plaintiff's claim specified in the affidavit, be signed by the justice of the peace issuing it, and shall require the constable or sheriff to arrest the defendant and bring him forthwith before said justice.

**SEC. 921. [Same—Execution.]**—The officer receiving said order shall execute the same by forthwith arresting the defendant and delivering to him a copy thereof, and of the affidavit. And the defendant, so arrested, unless the claim of the plaintiff, specified in the affidavit, and costs of suit, are paid, or unless discharged from custody by order of the plaintiff, shall be taken by such constable or sheriff forthwith before the justice of the peace by whom said order of arrest was issued, and kept in custody until discharged by law.

**SEC. 922. [Proceedings upon return.]**—Upon return of said order of arrest, executed in pursuance of the preceding section, the trial of said cause shall proceed, unless for good cause shown, upon the application of either party, or at the instance of the justice himself, the same shall be continued, as is provided for in other cases before justices of the peace. And when the trial of said cause is continued for any period, the defendant, upon executing with one or more sufficient sureties, a written undertaking to the effect that he will pay the amount of the judgment that may be rendered against him upon the final determination of the action, or upon depositing in the hands of the justice of the peace the amount of money mentioned in the order of arrest, and the probable amount of costs of suit, shall be forthwith discharged from custody; *Provided, however,* That in no case shall the defendant be detained in the custody of the officer, when said continuance has been for a period of more than forty-eight hours, un-



less said continuance has been made at the instance or with the consent of the defendant himself.

#### ARREST AFTER JUDGMENT.

**SEC. 923. [How made.]**—On the judgment against the defendant in any civil suit before a justice of the peace, when the defendant is in the custody of the officer, as hereinbefore provided for, or if, after judgment against him, there is filed in the office of such justice an affidavit of the plaintiff, his authorized agent or attorney, made before any person competent to administer an oath, stating the amount of said judgment remaining unpaid, and establishing one or more of the particulars mentioned in section nine hundred and seventeen, said justice of the peace shall, unless otherwise ordered by the plaintiff, issue an execution, and accompany the same with an order for the arrest of the defendant.

**SEC. 924. [Order—Proceedings.]**—Said order of arrest shall be addressed and delivered, with a copy of the affidavit, to the officer having said execution, and shall state the names of the parties, be signed by the justice issuing it, and state the amount of the judgment and costs unpaid, and shall require the officer, in case the same shall not be paid, or an amount of property of the defendant whereon to levy execution sufficient to satisfy the same cannot be found in his county, to arrest the defendant, if not already in the custody of the officer, and deliver him to the sheriff of the proper county, to be committed by him to the jail of the county, and kept in custody until discharged by law; *Provided, however,* That no such order of arrest be issued until the undertaking required by the nine hundred and nineteenth section of this code shall have been executed.

#### ATTACHMENT.

**SEC. 925. [Grounds for order.]**—The plaintiff shall have an order of attachment against the property of the defendant, in a civil action before a justice of the peace, for the recovery of money before or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim, that it is just, the amount which the affiant believes the plaintiff ought to recover, and the existence of some one or more of the following particulars: *First.* That the defendant, or one of the several defendants, is a foreign corporation, or is a non-resident of the state; or, *Second.* Has absconded, with intent to defraud his creditors; or, *Third.* Has left the county of his residence to avoid the service of a summons; or, *Fourth.* So conceals himself, that a summons cannot be served upon him; or, *Fifth.* Is about to remove his property, or a part thereof, out of the county, with the intent to defraud his creditors; or, *Sixth.* Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or, *Seventh.* Has property or rights in action, which he conceals; or, *Eighth.* Has assigned, removed, or disposed of, or is about to dispose of, his property, or a part thereof, with intent to defraud his creditors; or, *Ninth.* Fraudulently contracted the debt, or incurred the obligation for which suit is about to be, or has been, brought. When the defendant is a foreign corporation, or a non-resident of the state, the attachment shall not be granted, unless the claim is for a debt or demand arising upon contract, judgment, or decree.

**SEC. 926. [Undertaking.]**—When the ground of attachment is that the defendant is a foreign corporation, or a non-resident of the state, the order of attachment may be issued without an undertaking, but in all other cases the order of attachment shall not be issued by the justice until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the justice, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

**SEC. 927. [Order—When issued—Contents.]**—The order of attachment may be made to accompany the summons, or it may be issued at any time after-

wards, before judgment; it shall be addressed and delivered to any constable or sheriff of the proper county, and shall require him to attach the goods, chattels, stocks, or interests in stocks, rights, credits, moneys, and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof, as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

SEC. 928. [**Same—Returnable.**].—The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be executed and returned forthwith.

SEC. 929. [**Same—Execution—Several orders.**].—When there are several orders of attachment against the same person, in the hands of the same officer, they shall be executed in the order in which they are received by said officer; he shall go to the place where the defendant's property may be found, and there, in the presence of two credible persons, declare that, by virtue of said order he attaches said property at the suit of said plaintiff; and the officer, with two residents of the county, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all property attached, which shall be signed by the officer and said residents, and returned with the order; when the property can be come at, he shall take the same into his custody, and hold it subject to the order of the justice.

SEC. 930. [**Property delivered on bail.**].—The officer shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the officer of an undertaking to the plaintiff, with one or more sufficient sureties resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person or persons so bound.

SEC. 931. [**Several attachments—Appraisement.**].—Different attachments of the same property may be made, and one inventory and appraisement shall be sufficient. The lien of the attachments shall be in the order in which they are served, and the subsequent attachments shall be served on the property, as in the hands of the officer, and subject to the prior attachments. The justice who issued the attachment having the priority of lien, shall determine all questions as to the priority of liens on the property attached.

SEC. 932. [**Order—Service.**].—If the order of attachment is made to accompany the summons, a copy thereof, and the summons, shall be served upon the defendant in the usual manner for the service of a summons, if the same can be done within the county; and when any property of the defendant has been taken under the order of attachment, and it shall appear that the summons issued on the action has not been and cannot be served on the defendant in the county, in the manner prescribed by law, the justice of the peace shall continue the cause for a period not less than forty days nor more than sixty days, whereupon the plaintiff shall proceed for three consecutive weeks to publish, in some newspaper printed in the county, or if none be printed therein, then in some newspaper of general circulation in said county, a notice, stating the names of the parties, the time when, by what justice of the peace, and for what sum said order was issued, and shall make proof of such publication to the justice; and thereupon said action shall be proceeded with, the same as if summons had been duly served.

SEC. 933. [**Sale of perishable property.**].—When the cause is continued as provided for in the preceding section, and it shall appear that any of the property taken under the attachment is live stock, or is of a perishable nature, the justice may issue his order, directing the officer having the custody thereof to dispose of the same as upon execution; and the moneys realized therefrom shall be

paid over to the justice, and applied as other money realized from the sale of property attached is applied.

**SEC. 934. [Garnishment—Affidavit—Notice.]**—When the plaintiff, his agent, or attorney, shall make oath in writing that he has good reason to believe, and does believe, that any person or corporation, to be named, and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice, that he appear before the justice at the return of the order of attachment, and answer as provided in section nine hundred and thirty-six.

**SEC. 935. [Garnishee, how served.]**—The copy of the order and the notice shall be served upon the garnishee, as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other head of the same, or the secretary, cashier, or managing agent thereof.

**SEC. 936. [Same—Answer.]**—The garnishee shall appear before the justice, in accordance with the command of the notice, and shall answer, under oath, all questions put to him touching the property of every description, and credits of the defendant in his possession or under his control, and he shall disclose, truly, the amount owing by him to the defendant, whether due or not, and, in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of the notice.

**SEC. 937. [Same—Payment by—Discharge—Costs.]**—A garnishee may pay the money owing to the defendant by him, to the officer having the order of attachment, or into the court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

**SEC. 938. [Same—Failure to answer.]**—If the garnishee do not appear and answer, as required by section nine hundred and thirty-six, the justice may proceed against him by attachment, as for a contempt.

**SEC. 939. [Same—When debtor—Proceedings.]**—If the garnishee appear and answer, and it is discovered on his examination that at or after the service of the order of attachment and notice upon him he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property and the payment of the amount owing by the garnishee into the court, or may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff, by one or more sufficient sureties to the effect that the amount shall be paid, or the property forthcoming, as the court may direct.

**SEC. 940. [Further proceedings against garnishee.]**—If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the justice to deliver the property and pay the money owing into the court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action in his own name, as in other cases; and thereupon such proceedings may be had as in other actions and judgment may be rendered in favor of the plaintiff, for the amount of property and credits of every kind of the defendant, in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases.

When the claims of the plaintiff in attachment are satisfied, the defendant in the attachment may, on motion, be substituted as the plaintiff in the judgment.

**SEC. 941. [Judgment, when rendered—Discharge of garnishee.]**—Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment has been determined; and if, in such action, judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys, and credits of the defendant, in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

**SEC. 942. [Judgment for defendant.]**—If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached or its proceeds shall be returned to him.

**SEC. 943. [Same—For plaintiff—Satisfaction.]**—If judgment be rendered for the plaintiff it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, if any, whether held by legal or equitable right, as may be necessary to satisfy the judgment, shall be sold by order of the justice, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue, in all respects as in other cases. Any surplus of the attached property or its proceeds, shall be returned to the defendant.

**SEC. 944. [Property retaken, when.]**—The justice may order the officer to repossess himself, for the purpose of selling it, of any of the attached property which may have passed out of his hands without being sold or converted into money, and the officer shall, under such order, have the same power to take the property as he would have under an order of attachment.

**SEC. 945. [Intervening claimants.]**—If any of the property which has been attached, be claimed by any person other than the defendant, the claimant may have the validity of such claim tried, and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person.

**SEC. 946. [Priority of attachments.]**—Where several attachments are executed on the same property, or the same persons are made garnishees, the justice issuing the first order, served on the motion of any of the plaintiffs, may determine the amounts and priorities of the several attachments, and the proceeds shall be applied accordingly.

**SEC. 947. [Return to writ.]**—The officer shall return upon every order of attachment what he has done under it. The return must show the property attached and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return, with the order, all undertakings given under it.

**SEC. 948. [Order binds property—When.]**—An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys and credits in his hands, or due from him to the defendant, from the time he is served with the written notice, mentioned in section nine hundred and thirty-four; but when property is attached in the hands of a consignee, or other person having a prior lien, his lien thereon shall not be affected by the attachment.

**SEC. 949. [Property released on bail.]**—If the defendant, or other person in his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the justice, in double the amount of the plaintiff's claim, to be stated

in his affidavit, to the effect that the defendant shall perform the judgment of the justice, the attachment in such action shall be discharged and restitution made of any property taken under it, or the proceeds thereof; such undertaking shall also discharge the liability of a garnishee in such action, for any property of the defendant in his hands.

SEC. 950. [**Action transferred to district court.**].—If in any case where an order of attachment has been issued by a justice of the peace, it shall appear from the return of the officer and from the examination of the garnishee, that no property, moneys, rights, credits or effects of the defendant have been taken under the attachment, but that the defendant is the owner of an interest in real estate in the county, the justice before whom said action is pending shall, at the request of the plaintiff, forthwith certify his proceedings to the district court of the proper county, and thereupon the clerk of said court shall docket said cause, and the action shall be proceeded with in said court, in all respects as if the same had originated therein.

#### CHAPTER III.—BILL OF PARTICULARS.

SEC. 951. [**Filing.**].—In all cases before a justice, the plaintiff, his agent or attorney, shall file with such justice a bill of the particulars of his demand, and the defendant, if required by the plaintiff, his agent or attorney, shall file a like bill of the particulars he may claim as a set-off; and the evidence on the trial shall be confined to the items set forth in said bills.

SEC. 952. [**Contents.**].—The bill of particulars must state, in a plain and direct manner, the facts constituting the cause of action, or the claim to be set-off.

SEC. 953. [**Amendments.**].—The bill of particulars may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omission in the items, when by such amendments substantial justice will be promoted. If the amendment be made at the time of or during the trial, and it be made to appear to the satisfaction of the justice, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The justice may also, in his discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment cannot be required unless an adjournment is made necessary by the amendment.

#### CHAPTER IV.—CHANGE OF THE PLACE OF TRIAL.

SEC. 954. [**Grounds for.**].—The place of trial may be changed if on the return of process, or at any time before trial shall have commenced, it shall be made satisfactorily to appear to the justice of the peace before whom any cause is instituted, or is pending for trial, by the affidavit of either of the parties in the case, that such justice is a material witness for either party, or if a jury be demanded by the adverse party, then that he cannot, as he verily believes, have a fair and impartial trial in the precinct or place for which said justice may have been elected, on account of the bias or prejudice of the citizens thereof.

SEC. 955. [**Where transferred.**].—If the place of trial be changed on account of the justice being a material witness in the cause, such cause may be transferred for trial before some other justice of the peace in the same precinct. If the place of trial be changed on account of the bias or prejudice of the citizens of such precinct or place, the case shall be taken to some justice in an adjoining precinct in the same county.

SEC. 956. [**Transfer of papers and record.**].—The justice granting such change shall deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to whom such change may be granted, who shall proceed therein and have the same jurisdiction, powers and

duties, in all respects whatever, as if suit had been originally instituted before him.

**SEC. 957. [Costs.]**—Before any such change shall be allowed, the costs, as specified in the next following section, shall be paid by the party applying for such change.

**SEC. 958. [Same.]**—When such change is at the instance of the plaintiff, he shall be taxed with all the costs which have accrued and which shall accrue in the cause, until such transcript and papers shall be delivered to the justice to whom such cause is removed for trial; and when on the application of the defendant, he shall be taxed for the costs which have accrued for issuing subpoenas for witnesses and service thereof, witness fees and costs of the justice for transferring the cause to the docket of the other justice.

**SEC. 958 a. [Same—Interest—Bias of justice.]**—**SEC. 1.** That in all civil and criminal proceedings before justices of the peace, any defendant in such proceedings may apply for and obtain a change of venue, by filing an affidavit in the case made by the defendant, his agent or attorney, stating that the defendant cannot, as affiant verily believes, have a fair and impartial hearing in the case on account of the interest, bias, or prejudice of the justice, and by paying the costs now required to be paid by defendant on change of venue, for the causes and in the cases mentioned in chapter four of title thirty, part two of the revised statutes, and thereupon the proceedings shall be transferred to the nearest justice of the peace, to whom the said objections do not apply, of the same county, to be proceeded with in the manner pointed out for the transfer and procedure in cases on change of venue for cause mentioned in said chapter four. [1871 § 1, 110.]

**SEC. 958 b. [Same—Application—When made.]**—**SEC. 2.** The application shall be made before entering upon the merits of the case by the introduction and reception of evidence; and no second change of venue shall be allowed for the same cause in the same proceeding.

#### CHAPTER V.—ADJOURNMENTS.

**SEC. 959. [On motion of justice.]**—Upon the return day, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party, as follows: *First.* Where a party is in attendance who is not a resident of the county, or where the defendant is in attendance under arrest, the adjournment not to exceed forty-eight hours, and the defendant, if under arrest, to continue in custody. *Second.* In other cases, not to exceed eight days, unless by consent of parties. If the trial be not adjourned, it must take place immediately upon the return of the summons.

**SEC. 960. [On application of party.]**—The trial may be adjourned upon the application of either party, without the consent of the other, for a period not exceeding thirty days, as follows: The party asking the adjournment must, if required by his adversary, prove by his own oath, or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial.

**SEC. 961. [Same—Further adjournments.]**—An adjournment may be had either at the return day, or at any subsequent time to which the cause may stand adjourned, on the application of either party, for a period longer than thirty days, but not to exceed ninety days from the time of the return of the summons, upon compliance with the provisions of the preceding section, and upon proof by oath of the party, or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment for want of material evidence, describing it, that the delay has not been made necessary by any act or negligence on his part since the action was commenced, and that he expects to procure the evidence at the time stated by him.

SEC. 958 a, b. "An act to allow a change of venue in civil and criminal proceedings before justices of the peace, on account of the interest, bias or prejudice of the justice." Laws 1871, 70. G. S. 718. Took effect Mar. 25, 1871. Affiant should state objection, if any, to nearest justice. Only one change allowed for same cause. 10 Neb. 82. These provisions do not apply to county courts. 10 Neb. 439.

## CHAPTER VI.—WITNESS.

**SEC. 962. [Subpoena—When issued.]**—Any justice may issue subpoenas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony.

**SEC. 963. [Same—Service.]**—A subpoena may be served by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence.

**SEC. 964. [Fees.]**—When not served by a constable or sheriff, or some person deputed for that purpose by a justice, no fees shall be charged in the suit for serving it.

**SEC. 965. [Costs.]**—If any witness, having been subpoenaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpoena, unless the adverse party, by confessing the matter, or otherwise, render unnecessary the examination of such witness.

**SEC. 966. [Contempt of subpoena—Arrest, etc.]**—Whenever it shall appear to the satisfaction of a justice, by proof made before him, that any person has been duly served with a subpoena to appear and give testimony before him in any matter in which he has authority to require such witness to appear and testify, that his testimony is material, and that he refuses or neglects to attend as such witness in conformity with such subpoena, the justice shall issue a warrant for the arrest of the delinquent, for the purpose of compelling his attendance, and punishing his disobedience.

**SEC. 967. [Same—Punishment.]**—When a person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding five dollars. An entry of such fine, stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the state of Nebraska against the delinquent, and may be enforced against his person or property.

**SEC. 968. [Neglect of witness—Liability.]**—Every person subpoenaed as aforesaid, and neglecting to appear, or refusing to testify, shall also be liable to the party in whose behalf he shall have been subpoenaed, for all damages which such party shall sustain by reason of such delinquency.

**SEC. 969. [Deposition—When taken.]**—Depositions may be taken to be read in a cause pending before a justice of the peace, in like manner, and subject to the same restrictions and rules of law as in cases pending in the district court.

## CHAPTER VII.—THE TRIAL.

**SEC. 970. [When held.]**—At the time appointed for trial, if no jury shall have been demanded by either party, the justice shall proceed to try the action, shall hear the proofs, and determine the cause according to law and the right.

**SEC. 971. [Appearance without process.]**—Where parties agree to enter, without process, before a justice, any action of which such justice has cognizance, such justice shall enter the same on his docket, and proceed to trial, judgment, and execution, in all respects in the same manner as if summons had been issued, served and returned.

**SEC. 972. [Jury trial—Adjournment.]**—In all civil actions, after the appearance of the defendant, and before the court shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful men, having the qualifications of electors, unless the parties shall agree on a less number. When a jury is demanded, the trial of the cause must be adjourned until a time fixed for the return of the jury. If neither party desire an adjournment, the time must be determined by the justice, and must be on the same day, or within the next two days the jury must be immediately selected, as herein provided.

**SEC. 973. [Jury selection.]**—The justice shall write in a panel, the names of eighteen persons, citizens of the county, from which the defendant, his agent, or attorney, shall strike one, and then the plaintiff, his agent, or attorney, shall strike one, and so on alternately, until each shall have stricken six names, and the remaining six shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid, the justice shall strike the same in behalf of such party. [Amended 1869, 90. Took effect first Monday in April, 1869.]

**SEC. 974. [Venire.]**—The justice thereupon shall issue a summons for the jury, in which the following form shall be observed in substance, as near as practicable:

THE STATE OF NEBRASKA, }  
   County, }

*To any Constable or the Sheriff of said County:*

You are hereby commanded to summon \_\_\_\_\_ to appear before me at my office, in said county, on the — day of —, A. D. —, at — o'clock in the — noon, to serve as jurors in a case pending before me, then and there to be tried. And this they shall in nowise omit. And have you then and there this writ, with your doings thereon.

Given under my hand, this — day of —, A. D. —.

\_\_\_\_\_, *Justice of the Peace.*

[Const. sec. 24, Art. VI.]

**SEC. 975. [Same—Service—Neglect of juror—Penalty.]**—The officer shall serve such summons by a personal service thereof, and return the same, endorsed with the names of the persons summoned, at the time appointed for the trial of the case. Jurors, for neglecting to attend when properly summoned, or refusing to serve when in attendance, shall be liable to the like penalty, and be proceeded against in the same manner as witnesses who fail to attend or refuse to testify.

**SEC. 976. [Officer attend trial—Additional jurors.]**—The constable or sheriff shall be in attendance on the court at and during the progress of the trial; and if, from challenge or other cause, the panel shall not be full, he may fill the same in the same manner as is done by the sheriff in the district court.

**SEC. 977. [Continuance—Notice to jurors.]**—When a jury shall be in attendance, and the cause shall be continued, the jurors must attend at the time and place appointed for trial, without further notice.

**SEC. 978. [Objections to jurors.]**—If either party object to the competency of a juror, the question thereon must be tried in a summary manner by the justice, who may examine the juror or other witness under oath.

**SEC. 979. [Oath of jury.]**—The justice shall administer an oath or affirmation to the jury, well and truly to try the matter in difference between the parties, and a true verdict to give according to the evidence.

**SEC. 980. [Conduct of jury before verdict.]**—After the jury shall have been sworn, they shall sit together and hear proofs and allegations of the parties; and after hearing the same, shall be kept together in some convenient place, under charge of a constable or sheriff, until they have agreed upon their verdict, or shall be discharged by the justice.

**SEC. 981. [Verdict—Entry.]**—When the jury shall have agreed upon their verdict, they shall deliver it to the justice, publicly, who shall enter it upon his docket.

**SEC. 982. [Failure to agree—Continuance.]**—Whenever the justice shall be satisfied that a jury, sworn in any cause before him, cannot agree in the verdict, after having consulted upon it a reasonable time, he may discharge them and continue the cause, and may, if required by either party, proceed to strike another jury, as hereinbefore provided. The cause shall be continued to such time as the justice thinks reasonable, unless the parties, or their attorneys, agree on a longer or shorter time, or unless they agree that the justice may render judgment on the evidence already before him.



**SEC. 983. [New trial—When granted.]**—It shall be lawful for the justice before whom a cause has been tried, on motion, and being satisfied that the verdict was obtained by fraud, partiality, or undue means, at any time within four days after the entering of judgment, to grant a new trial, and he shall set a time for the new trial, of which the opposite party shall have three days notice.

**SEC. 984. [Same—Notice of motion.]**—The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party; such notice to be given by the applying party. If the new trial shall be granted or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons.

**SEC. 985. [Appeal, when allowed.]**—If either the plaintiff or defendant, in his bill of particulars, claims more than twenty dollars the case may be appealed to the district court; but if neither party demands a greater sum than twenty dollars, and the case is tried by a jury, there shall be no appeal.

**SEC. 986. [Judgment in district court.]**—If, on an appeal by the plaintiff, from a judgment in his favor, he shall not recover a larger sum than twenty dollars exclusive of interest since the rendition of the judgment before the justice, he shall be adjudged to pay all costs in the district court including a fee of five dollars to the defendant's attorney; and in case the defendant shall demand a set-off greater than twenty dollars, and he appeals from a judgment in his favor and does not recover twenty dollars, he shall, in like manner, pay all costs in the appellate court, including a like fee to the plaintiff's attorney. [Amended Feb. 25. Took effect June 1, 1881.]

**SEC. 987. [Fees of jury—Costs.]**—Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each juror shall be entitled to receive fifty cents at the hands of the successful party, which shall be taxed in the cost bill against the losing party. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party.

**SEC. 988. [Bill of exceptions.]**—In all cases which shall be tried by a jury before a justice of the peace, either party shall have the right to except to the opinion of the justice, upon any question of law arising during the trial of the cause; and when either party shall allege such exception, it shall be the duty of the justice to sign and seal a bill, containing such exception, if truly alleged, with the point decided, so that the same may be made part of the record in the cause.

#### ARBITRATIONS.

**SEC. 989. [Submission.]**—At any time before trial and judgment rendered, the plaintiff and defendant consenting thereto, may have the cause submitted to the arbitrament of three disinterested men, who shall be chosen by the parties; and if the arbitrators be present they shall hear and determine the cause on oath or affirmation, to be administered by the justice. But if the persons chosen as arbitrators be not present, the justice shall issue summons for them to attend at the time and place appointed for the trial, which shall be served by any constable, sheriff, or the parties, as they may agree. The fees of arbitrators shall be the same as that paid to jurors.

**SEC. 990. [Award.]**—When the arbitrators shall convene and be qualified, they shall proceed to hear and determine the cause, and make out their award in writing, which shall be valid when signed by any two of them, and return the same to the justice, who shall thereupon enter such award upon his docket, and thereon render judgment and issue execution as in other cases.

SEC. 983. New trial cannot be granted for other reasons. 6 Neb. 303, 492.

SEC. 985. Does not apply to actions of replevin. 7 Neb. 19.

SEC. 986. Original section cited. 10 Neb. 509.

SEC. 988. Exceptions cannot be considered in reviewing court unless cause is tried by jury. 3 Neb. 311.  
4 Neb. 96.

**SEC. 991. [Judgment on award.]**—Every judgment rendered on such award, shall conclude the rights of the parties thereto, unless it shall be made to appear to the justice of the peace who rendered such judgment, and within ten days of the rendition of the same, or to the district court, on appeal, that such award was obtained by fraud, corruption, or other undue means.

**SEC. 992. [Award set aside—When.]**—Whenever satisfactory proof shall be adduced before such justice, within the period aforesaid, that such award was obtained by fraud, corruption or other undue means, it shall be competent for such justice to set aside such award and his judgment thereon rendered, and thereupon proceed to such final trial and judgment, as if such award had never been made.

**SEC. 993. [Same—Appeal—Affidavit.]**—But no appeal shall be allowed to the district court from a judgment of a justice of the peace rendered on an award, unless the party praying such appeal shall file with such justice an affidavit, therein stating that he or she does verily believe that such award was obtained by fraud, corruption or other undue means.

**SEC. 994. [Judgment of district court.]**—And if on appeal from the judgment of a justice rendered on any such award, the district court shall be satisfied that the award was obtained by fraud, corruption or other undue means, such court shall set aside the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal.

**SEC. 995. [Same.]**—But if the court shall be of the opinion that the award was not obtained by fraud, corruption or other undue means, they shall render judgment thereon for the costs of suit and award execution as in other cases.

#### TRIAL OF THE RIGHT OF PROPERTY LEVIED ON OR ATTACHED.

**SEC. 996. [Trial.]**—When a constable or sheriff shall levy on or attach property claimed by any person or persons other than the party against whom the execution or attachment issued, the claimant or claimants shall give three days notice, in writing, to the plaintiff or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, of the time and place of the trial of the right to such property, which trial shall be had before some justice of the county, at least one day prior to the time appointed for the sale of such property.

**SEC. 997. [Judgment for claimant.]**—If on the trial, the justice shall be satisfied from the proof that the property, or any part thereof belongs to the claimant or claimants (or in case when a jury is demanded, the jury so find), such justice shall render judgment against the party, in whose favor such execution or attachment issued for the costs and issue execution therefor, and shall, moreover, give a written order to the officer who levied on, or who may be charged with the duty of selling such property, directing him to restore the same, or so much thereof as may have been found to belong to such claimant or claimants. [Amended 1875, 43. Took effect Feb. 25, 1875.]

**SEC. 998. [Judgment against claimant.]**—But if the claimant or claimants fail to establish his or their right to such property, or any part thereof, the justice shall render judgment against such claimant or claimants for the costs that have accrued on account of such trial, and issue execution therefor; and the officer shall not be liable to the claimant or claimants for the property so taken.

#### CHAPTER VIII.—JUDGMENT.

**SEC. 999. [Action dismissed without prejudice.]**—Judgment that the action be dismissed without prejudice to a new action, may be entered with costs, in the following cases: *First.* When the plaintiff voluntarily dismisses the action before it is finally submitted. *Second.* When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.

**SEC. 997.** Judgment in favor of claimant not conclusive as to ownership of property. 9 Neb. 506. The proceeding is not a "civil action," and not properly triable by a jury. 10 Neb. 50.

**SEC. 1000. [Failure to appear.]**—If the plaintiff fail to appear at the return day of the summons, and his bill of particulars be not filed, and there be no evidence before the justice, the action must be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at the time to which a trial has been adjourned, or fail to make the necessary bill of particulars, or fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the bill of particulars and proofs.

**SEC. 1001. [In absence of defendant, how set aside.]**—When judgment shall have been rendered against a defendant in his absence, the same may be set aside upon the following conditions: *First.* That his motion be made within ten days after such judgment was entered. *Second.* That he pay or confess judgment for the costs awarded against him. *Third.* That he notify in writing the opposite party, his agent, or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial, at least five days before the time, if the party reside in the county, and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before the trial.

**SEC. 1002. [On verdict.]**—Upon a verdict, the justice must immediately render judgment accordingly. When the trial is by the justice, judgment must be entered immediately after the close of the trial, if the defendant has been arrested or his property attached; in other cases it must be entered either at the close of the trial, or if the justice then desire further time to consider, on or by the fourth day thereafter, both days inclusive.

**SEC. 1003. [Amount in excess of jurisdiction.]**—When the amount due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount withheld.

**SEC. 1004. [Offer to confess.]**—If the defendant, at any time before trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued. But if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he cannot recover costs accrued after the offer; but costs must be adjudged against him. But the offer and failure to accept it, cannot be given in evidence, to affect the recovery, otherwise than as to costs as above provided.

**SEC. 1005. [When defendant subject to arrest.]**—Where judgment is rendered in a case where the defendant is subject to arrest and imprisonment, it must be so stated in the judgment, and entered in the justice's docket.

#### CHAPTER IX.—APPEALS.

**SEC. 1006. [Allowance.]**—In all cases, not otherwise specially provided for by law, either party may appeal from the final judgment of any justice of the peace, to the district court of the county where the judgment was rendered.

**SEC. 1007. [Undertaking.]**—The party appealing shall, within ten days from the rendition of judgment, enter into an undertaking to the adverse party, with at least one good and sufficient surety to be approved by such justice, in a

SEC. 999. Plaintiff may dismiss on his own motion. 6 Neb. 148.

SEC. 1001. See note to sec. 1006. Applicable in county courts. *State v. Smith*. 11 Neb.

SEC. 1002. After expiration of time limited justice has no authority to amend or modify judgment. 6 Neb. 531.

SEC. 1004. The offer need not be renewed in appellate court. 8 Neb. 341. A plea of tender and payment into court differs from offer under this section. 10 Neb. 170.

SEC. 1006. See note to section 985. Appeal does not lie where defendant fails to appear, until after motion to set aside judgment. Sec. 1001. 7 Neb. 475. Appeal only lies from final judgment. 10 Neb. 511. Act of 1875 "regulating appeals," etc. Laws p. 58, having been held unconstitutional [4 Neb. 355] is omitted. 5 Neb. 84. And see as to waiver of benefits of this section by plaintiff, 11 Neb. 48.

SEC. 1007. If tenth day falls on Sunday, undertaking may be filed on Monday next. 8 Neb. 362.

sum not less than fifty dollars in any case, nor less than double the amount of judgment and costs, conditioned: *First.* That the appellant will prosecute his appeal to effect and without unnecessary delay. *Second.* That if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs. Such undertaking need not be signed by the appellant.

SEC. 1008. [**Transcript.**].—The said justice shall make out a certified transcript of his proceedings, including the undertaking taken for such appeal, and shall, on demand, deliver the same to the appellant, or his agent, who shall deliver the same to the clerk of the court to which such appeal may be taken, within thirty days next following the rendition of such judgment; and such justice shall also deliver or transmit the bill or bills of particulars, the depositions and all other original papers, if any used on the trial before him, to such clerk, on or before the second day of such term; and all other proceedings before the justice of the peace in that case shall cease and be stayed from the time of entering into such undertaking. [Amended 1877, 15. Took effect June 1, 1877.]

SEC. 1009. [**Docketing.**].—The clerk, on receiving such transcript and other papers as aforesaid, shall file the same and docket the appeal.

SEC. 1010 [**Proceedings in district court.**].—The plaintiff in the court below shall be the plaintiff in the district court; and the parties shall proceed, in all respects, in the same manner as though the action had been originally instituted in the said court.

SEC. 1010 a. [**Same—Pleadings.**].—SEC. 1. That in all cases of appeal from the county court or a justice of the peace, the plaintiff shall, within twenty days from and after the filing of his transcripts in the district court as required by law, file his petition as required in civil cases in the court to which such appeal is taken; and the answer shall be filed and issue joined as in cases commenced in such appellate court. [1877, § 1, 17.]

SEC. 1011. [**Same—Failure to perfect appeal.**].—If the appellant shall fail to deliver the transcript and other papers, if any, to the clerk, and have his appeal docketed as aforesaid, on or before the second day of the term of the said court next after such appeal, the appellee may, at the same term of said court, file a transcript of the proceedings of such justice, and the said cause shall, on motion of the said appellee, be docketed; and the court is authorized and required, on his application, either to enter up a judgment in his favor, similar to that entered by the justice of the peace, and for all the costs that have accrued in the court, and award execution thereon; or such court may, with the consent of such appellee, dismiss the appeal, at the cost of the appellant, and remand the cause to the justice of the peace, to be thereafter proceeded in as if no appeal had been taken; and if the plaintiff in the action before the justice shall appeal from any judgment rendered against such plaintiff, and after having filed his transcript and caused such appeal to be docketed, according to the provisions of this chapter, shall fail to file his petition, or otherwise neglect to prosecute the same to final judgment, the said plaintiff shall become non-suited, and it shall be the duty of said court to render judgment against such appellant for the amount of the judgment rendered against him by the justice, together with interest accrued thereon and for costs of suit, and to award execution therefor, as in other cases.

SEC. 1012. [**Same—Failure of both parties.**].—If both parties fail to enter such appeal within the time limited as aforesaid, the justice, on receiving a certificate from the clerk of the court, stating that the appeal was not entered, or, being entered, was dismissed as aforesaid, shall thereupon issue execution upon the judgment, in the same manner as if such appeal had never been taken.

SEC. 1008. A failure to file transcript, unless continued beyond the second day of next succeeding term [Sec. 1011] is no ground for dismissing appeal. 8 Neb. 149, 363. Defendant appealing is not in default in district court until after rule day for filing his answer has elapsed. 4 Neb. 188.

SEC. 1010. If district court has no jurisdiction it is error to render a final judgment or one for costs. If it has jurisdiction, and a jury has been called and evidence given it is error to discharge jury, and render final judgment by the court. 7 Neb. 480.

SEC. 1010 a. "An act to provide for the time for filing pleadings in cases of appeal from the county court and justices of the peace." Approved Feb. 17, 1877. Took effect June 1, 1877.

SEC. 1011. See note to section 1008.

**SEC. 1013. [Costs—Against appellant, when.]**—If any person appealing from a judgment rendered in his favor, shall not recover a greater sum than the amount for which judgment was rendered, besides costs and the interest accruing thereon, every such appellant shall pay the costs of such appeal.

**SEC. 1014. [Surety in undertaking—Liability.]**—When any appeal shall be dismissed, or when judgment shall be entered in the district court against the appellant, the surety in the undertaking shall be liable to the appellee for the whole amount of the debt, costs, and damages, recovered against the appellant.

**SEC. 1015. [Appeal quashed—Proceedings.]**—When an appeal taken to the district court shall there be quashed, by reason of irregularity in taking or consummating the same, the cause for quashing shall be stated in the order of the court, and a transcript of such order shall be lodged with such justice, who shall thereupon proceed to issue execution, in the same manner as if no appeal had been taken.

**SEC. 1016. [Undertaking—Further security.]**—In proceeding on appeal when the surety in the undertaking shall be insufficient or such undertaking may be insufficient in form or amount, it shall be lawful for the court, on motion, to order a change or renewal of such undertaking, and direct the same to be certified to the justice from whose judgment the appeal was taken, or that it be recorded in said court.

**SEC. 1017. [Appeal—Not allowed—When.]**—Appeals in the following cases shall not be allowed: *First.* On judgments rendered on confession. *Second.* In jury trials, where neither party claims in his bill of particulars a sum exceeding twenty dollars. *Third.* In the action for the forcible entry and detention, or forcible detention only, of real property. *Fourth.* In trials of the right of property, under the statutes, either levied upon by execution or attached.

**SEC. 1018. [Expiration of term of justice.]**—When the term of office of a justice shall expire between the date of the judgment and the time limited for appeal, such justice may take the undertaking for appeal at any time before he has delivered the docket to his successor, and give the appealing party a transcript. After the delivery of the docket, the undertaking shall be given to his successor, and it shall be his duty to give the transcript, and do and perform all things required of his predecessor.

#### CHAPTER X.—ACTIONS FOR THE FORCIBLE ENTRY AND DETENTION, OR FORCIBLE DETENTION ONLY, OF PROPERTY.

**SEC. 1019. [Jurisdiction.]**—Any justice, within his proper county, shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those, who, having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands or tenements are held by force, or that the same, after a lawful entry, are held unlawfully, then said justice shall cause the party complaining to have restitution thereof.

**SEC. 1020. [Against whom.]**—Proceedings under this article may be had in all cases against tenants holding over their terms; in sales of real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of judgment or decree, by virtue of which such sale was made; in sales by executors, administrators or guardians, and on partition, where any of the parties to the partition were in possession at the commencement of the suit, after such sale so made on execution or otherwise, shall have been examined by the proper court, and the same by such court adjudged legal; and in cases where the defendant is a settler or occupier of lands or tene-

SEC. 1017. See note to sec. 985.

SEC. 1019. Title to real estate cannot be drawn in question. 5 Neb. 422. County courts have jurisdiction of actions under this chapter. 9 Neb. 151.

ments, without color of title, and to which the complainant has the right of possession. This section shall not be construed as limiting the provisions of section one thousand one hundred and nineteen.

SEC. 1021. [**Tenant holding over—Action not a bar.**].—A tenant shall be deemed to be holding over his term whenever he has failed, neglected or refused to pay the rent, or any part thereof, when the same was due, and judgments, either before the justice or in the district court, under this chapter, shall not be a bar to any after action brought by either party. [Amended 1875, 45. Took effect Feb. 25, 1875.]

SEC. 1022. [**Notice—Service.**].—It shall be the duty of the party desiring to commence an action under this chapter, to notify the adverse party to leave the premises for the possession of which the action is about to be brought, which notice shall be served at least three days before commencing the action, by leaving a written copy with the defendant, or at his usual place of abode, if he cannot be found.

SEC. 1023. [**Complaint—Contents.**].—The summons shall not issue until the plaintiff shall have filed his complaint in writing with the justice, which shall particularly describe the premises so entered upon or detained, and shall set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises. The complaint shall be copied into and made a part of the record.

SEC. 1024. [**Summons—Service.**].—The summons shall be issued and directed, shall state the cause of the complaint, the time and place of trial, and shall be served and returned as in other cases. Such service shall be three days before the day of trial appointed by the justice.

SEC. 1025. [**Defendant—Failure to appear.**].—If the defendant does not appear in accordance with the requisitions of the summons, and it shall have been properly served, the justice shall try the cause as though he was present.

SEC. 1026. [**Continuance—Undertaking.**].—No continuance shall be granted for a longer period than eight days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient surety to be approved by the justice, conditioned for the payment of the rent that may accrue, if judgment be rendered against the defendant.

SEC. 1027. [**Trial—By justice.**].—If the suit be not continued, place of trial changed, or neither party demand a jury, upon the return day of the summons, the justice shall try the cause; and if, after hearing the evidence, he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, he shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and costs of suit; if he find the complaint true in part, he shall render a judgment for the restitution of such part only, and the costs shall be taxed as the justice shall deem just and equitable.

SEC. 1028. [**Same—By jury.**].—If a jury be demanded by either party, the proceedings until the impaneling thereof, shall be in all respects as in other cases. The jury shall be sworn or affirmed, to well and truly try and determine whether the complaint of (naming the plaintiff), about to be laid before them is true according to the evidence. If the jury shall find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of not guilty; if true in part, then a verdict setting forth the facts they find true.

SEC. 1029. [**Judgment on verdict.**].—The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts authorizing the finding of such verdict had been found to be true by himself.

SEC. 1030. [**Exceptions.**].—Exceptions to the opinion of the justice, in

SEC. 1021. Judgment is conclusive on the matters in issue at time of its rendition, unless reversed on error. But it is no bar to another action in relation to the title of premises. 9 Neb. 145.

SEC. 1023. Complaint defective if it do not charge the entry and detention to be "unlawful." 9 Neb. 151.

cases under this chapter, upon questions of law and evidence may be taken by either party, whether tried by a jury or otherwise.

SEC. 1031. [**Writ of execution.**].—Where a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in the following form, as near as practicable:

THE STATE OF NEBRASKA, } ss.  
COUNTY. }

To any Constable or Sheriff of \_\_\_\_\_ County:

WHEREAS, In a certain action for the forcible entry and detention (or the forcible detention, as the case may be,) of the following described premises, to wit: \_\_\_\_\_, lately tried before me, wherein \_\_\_\_\_ was plaintiff, and \_\_\_\_\_ was defendant, judgment was rendered on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, that the plaintiff have restitution of said premises; and also that he recover costs in the sum of \_\_\_\_\_. You therefore are hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same; also that you levy of the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs; and of this writ make legal service and due return.

Witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_.

\_\_\_\_\_, Justice of the Peace.

[Const. sec. 24, Art. VI.]

SEC. 1032. [**Same—Execution of writ.**].—The officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs, and make return as upon other executions. If the officer shall receive a notice from the justice that the proceedings have been stayed by an allowance of a writ of error, he shall immediately delay all further proceedings, upon the execution; and if the premises have been restored to the plaintiff, he shall immediately place the defendant in the possession thereof, and return the writ, with his proceedings and costs taxed thereon.

#### CHAPTER XI.—REPLEVIN.

SEC. 1033. [**Jurisdiction.**].—The plaintiff may recover possession of specific personal property of less value than two hundred dollars, before a justice of the peace as herein provided. [Amended Feb. 28. Took effect June 1, 1881.]

SEC. 1034. [**Affidavit.**].—An action for this purpose shall not be brought until there is filed in the office of the justice, an affidavit of the plaintiff, his agent, or attorney, showing: *First.* A description of the property claimed. *Second.* That the plaintiff is the owner thereof, or has a special ownership therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property. *Third.* That the property is wrongfully detained by the defendant. *Fourth.* That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine, or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other *mesne* or final process issued against said plaintiff.

SEC. 1035. [**Summons—Order.**].—Upon such affidavit being made, and filed with the justice, he shall issue a summons as in other cases, but in addition commanding the officer immediately to seize and take into custody, wherever they may be found in the county, the goods and chattels mentioned in the affidavit, and deliver the same to the plaintiff.

SEC. 1036. [**Same—Execution of writ.**].—The constable or sheriff shall execute the writ by taking the property therein mentioned; he shall also deliver a copy of the summons to the person charged with the unlawful detention of property, or leave such copy at his usual place of residence; and shall make return of the time and manner of service, the appraisement of property, and any undertaking taken by him.

SEC. 1037. [**Undertaking.**].—The officer shall not deliver to the plaintiff, his agent, or attorney, the property so taken, until there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the de-

fendant, in at least double the value of the property taken, but in no case less than fifty dollars, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him.

SEC. 1088. [**Same—Appraisement.**]—For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two responsible persons, whom the officer shall swear truly to assess the value thereof.

SEC. 1089. [**Same—Excess of jurisdiction—Transfer to district court.**]—Whenever the appraised value of the property so taken shall exceed two hundred dollars, the justice shall certify the proceedings upon the said writ to the district court of his county, and thereupon shall file the original papers, together with a certified transcript of his docket entries, in the clerk's office of said court; the case there to be proceeded in as if said suit had commenced in said court. [Amended Feb. 28. Took effect June 1, 1881.]

SEC. 1040. [**Undertaking—Failure to give.**]—If the undertaking required by section one thousand and thirty-seven, be not given within twenty-four hours from the taking of the property under said order, the officer shall return the property to the defendant. And if the officer deliver any property so taken, to the plaintiff, his agent, or attorney, or keep the same from the defendant without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

SEC. 1041. [**Trial—When property delivered to plaintiff.**]—If the property has been delivered to the plaintiff, and judgment be rendered against him, or if he otherwise fail to prosecute his action to final judgment, the justice shall, on application of the defendant, or his attorney, impanel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied that the said property was the property of the defendant at the commencement of the action, or if they shall find that the defendant was entitled only to the possession of the same, at such time, then, in either case they shall assess such damages for the defendant as are right and proper, for which, with costs of suit, the court shall render judgment for the defendant. And in all cases where the property has been delivered to the plaintiff, unless the jury shall find for the defendant, they shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages as they think right and proper for the defendant, for which, with costs of suit, the court shall render judgment for the defendant.

SEC. 1042. [**Damage for detention.**]—In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on trial, or on inquiry of damages, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which, with costs of suit, the justice shall render judgment against the defendant.

SEC. 1043. [**Trial when property not delivered.**]—When the property claimed has not been taken, or has been returned to the defendant, for want of the undertaking required by section one thousand and thirty-nine, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by said section, the plaintiff shall pay all costs made by taking the same.

SEC. 1044. [**Execution of writ—Power of officer.**]—The officer, in executing the writ, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or enclosure, and the delivery of the property, after having demanded the same.

SEC. 1045. [**Suit on undertaking.**]—No suit shall be instituted on the

SEC. 1041. See sec. 191 a, ante p. 554.

SEC. 1043. See sec. 193 a, ante p. 554. Action dismissed for irregularities.



undertaking given under section one thousand and thirty-seven, before an execution, issued on a judgment in favor of the defendant in the action, shall have been returned that sufficient property whereon to levy and make the amount of such judgment cannot be found in the county.

**SEC. 1046. [Writ issued without undertaking—Penalty.]**—If any justice shall issue a writ to replevin property, as is provided by this chapter, without the affidavit being made and filed in his office as is provided in section one thousand and thirty-four, the same shall be set aside at his costs, and he shall be liable in damages to the party injured.

#### CHAPTER XII.—EXECUTIONS.

**SEC. 1047. [When issued.]**—Execution for the enforcement of a judgment before a justice of the peace (except where it has been taken to the district court on error or appeal, or docketed therein, or during the time it may be stayed, as provided by this title), may issue by the justice before whom the judgment was rendered, or by his successor in office, on the application of the party entitled thereto, at any time within five years of entry of the judgment, or the date of the last execution issued thereon.

**SEC. 1048. [Same—Without demand.]**—It shall be the duty of the justice, if the case be not appealed, taken up on error, docketed in the district court or bail has not been given for the stay of execution, at the expiration of ten days from the entry of the judgment, to issue execution, without a demand, and proceed to collect the judgment, unless otherwise directed by the judgment creditor.

**SEC. 1049. [Stay.]**—Any person against whom judgment may be rendered under the provisions of this title, except as hereinafter excepted, may have stay of execution for the several periods hereinafter mentioned, by entering into an undertaking with the adverse party, within ten days after the rendition of such judgment, with good and sufficient surety, resident of the county, as the justice shall approve, conditioned for the payment of the amount of such judgment, interest and costs, and costs that may accrue; which undertaking shall be entered on the docket of the justice, and be signed by the surety.

**SEC. 1050. [Same—For what time.]**—The stay of execution hereby authorized shall be graduated as follows, namely: *First.* On any judgment for five dollars and under, the stay shall be for sixty days, and on all sums over fifty dollars and under one hundred dollars the stay shall be for six months. *Second.* On any judgment exceeding five dollars and under fifty dollars, the stay shall be for ninety days. *Third.* Where judgment is rendered against a surety, and he takes a stay thereon, and he obtains judgment against the principal, stay of execution must be allowed on the judgment against the principal only so long that the stay will expire one month before that allowed to the surety on the judgment against him.

**SEC. 1051. [Same—When not allowed.]**—No stay of execution on judgments rendered in the following cases shall be allowed: *First.* On judgments rendered against justices of the peace, for refusing to pay over money by them collected or received in their official capacity. *Second.* On any judgment rendered against an officer for failing to make return, making a false return or refusing to pay over money collected in his official capacity. *Third.* On judgments against bail for the stay of execution. *Fourth.* Where judgment is rendered in favor of bail, who have been compelled by judgment to pay over money on account of their principal. *Fifth.* On judgments obtained by constables or sheriffs, on undertakings executed to them for the delivery of property.

**SEC. 1052. [Same—Writ recalled.]**—If the execution issued before the undertaking for stay, or that required in case of appeal, be given, and such undertaking be given afterwards and within the time allowed, the justice shall recall the execution.

**SEC. 1053. [Bail leaving county—Proceedings.]**—Where any person who has become bail for stay of execution shall remove out of the county before the expiration of such stay, the justice shall, on demand, issue execution against

the goods and chattels of the defendant, or other party against whom the original judgment was rendered, to be proceeded with as in other cases.

SEC. 1054. [**Execution notwithstanding stay.**].—When any surety for the stay of execution shall become apprehensive that, by delaying the execution until the expiration of the full time of such stay, he or she may be compelled to pay the judgment, it shall be lawful for such surety to make and file affidavit of that fact before the justice on whose docket the judgment is entered; whereupon such justice shall issue execution against the judgment debtor, which shall be proceeded in as in other cases; *Provided*, Such bail shall not thereby be discharged from liability, but may be proceeded against after the expiration of the term of stay, in the same manner as if execution had not issued as aforesaid.

SEC. 1055. [**Same—Further security.**].—If the judgment debtor shall, within ten days after levying such execution, enter into a further undertaking for the stay of execution, during so much of the first stay as remains then unexpired, and shall pay costs of the execution issued against him, as aforesaid, it shall be the duty of the justice to take such further undertaking, and recall the execution; and the person who last became surety shall first be proceeded against, until it shall appear by the return of the officer that he or she has no goods whereon to levy, before proceedings shall be instituted on the undertaking first given.

SEC. 1056. [**Judgment against surety—Subrogation.**].—When any judgment shall be obtained against any person who shall have entered himself bail on the docket of any justice of the peace, agreeably to the provisions of this title, the original judgment shall remain good and valid in law, for the use of such bail, who, at any time thereafter may sue out execution on such judgment, against the goods and chattels of the defendant, for the use of such bail, which shall be so endorsed by the justice; and such bail shall also be entitled to a transcript of such judgment, for his own use, which shall have the same force and effect as transcripts in other cases.

SEC. 1057. [**Additional security.**].—At any time before the stay shall expire, if the justice taking the surety, or his successor in office, shall become satisfied that the surety is insufficient, it shall be his duty to cause written notice thereof to be given to the defendant, or if he be absent, that the same be left at his residence, requiring him to give additional surety, on or by the third day after the giving of such notice; such facts shall be entered on the docket, and he shall immediately issue execution against the defendant for the collection of the judgment. If within ten days after the issuing of such execution, surety to the satisfaction of the justice be given, the execution shall be recalled and stayed until the expiration of the original stay.

SEC. 1058. [**Writ—Contents.**].—The execution must be directed to a constable or sheriff of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office, and must bear date the day of its delivery to the officer to be executed. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county where and the time when, it was rendered, the amount of the judgment, and, if less than the whole is due, the true amount due thereon. It must require the officer substantially as follows: *First*. If it be a case where the defendant cannot be arrested, it must direct the officer to collect the amount of the judgment out of the personal property of the debtor, and pay the same to the party entitled thereto. *Second*. If it be a case where any of the judgment debtors are certified on the docket as surety, it shall command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases the personal property of the principal, subject to execution within the jurisdiction, shall be exhausted, before any property of the bail shall be taken in execution. *Third*. If it be a case where the defendant may be arrested, in addition to the foregoing it must direct the officer, if sufficient property of the defendant subject to the execution cannot be found to satisfy the judgment, that he arrest the debtor and commit him to the

jail of the county until he pay the judgment, or be discharged according to law, unless the execution be accompanied by an order of arrest, as provided in sections nine hundred and twenty-three, and nine hundred and twenty-four. *Fourth.* It must in all cases direct the officer to make return of the execution and the certificate thereon, showing the manner in which he has executed the same, in thirty days from the time of his receipt thereof.

**SEC. 1059. [Same—Against joint debtors—Arrest of debtor.]**—Upon an execution on a judgment against joint debtors, upon one or more of whom the summons was not served, the execution must contain a direction to collect the amount out of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name. If such judgment be also such that the defendants are subject to arrest thereon, the justice must further specify the names of those defendants served with the summons, who may be arrested for want of property.

**SEC. 1060. [Arrest—Liability of officer.]**—The officer may, at his peril, omit to arrest a debtor, or after arrest suffer him to go at large before the return day, subject only for his liability for an escape, or for omitting to arrest, if he fail to have either the money or the person of the debtor in custody at the expiration of thirty days.

**SEC. 1061. [Discharge of prisoner by officer.]**—It shall be lawful for the sheriff or jailer receiving any person imprisoned on execution issued in any civil proceeding, at any time when there is no money in his hands to pay for the sustenance of such prisoner, to discharge him from prison. The jailer may, however, detain such prisoner, the adverse party being liable for such sustenance.

**SEC. 1062. [Imprisonment—Duration.]**—The debtor committed as herein provided, may be held in prison ten days, and, if he be a person without a family for which he provides, one day in addition for every dollar over ten, due on the execution; or, if he has a family for which he provides, one day in addition for every two dollars over twenty, due on the execution.

**SEC. 1063. [Same—Discharge on affidavit.]**—The affidavit of an imprisoned debtor, that he has a family for which he provides, specifying by name one or more persons, members of such family, and the place of their residence, is sufficient evidence thereof to authorize his discharge by the jailer.

**SEC. 1064. [Neglect of officer—Liability.]**—The officer is liable to the party in whose favor an execution issued to him for the amount thereof, in the following cases: *First.* Where he suffers thirty days to elapse without making a true return thereof to the justice, and paying to him, or to the party entitled, the money collected thereon by him. *Second.* Where he wilfully and carelessly omits to levy on property within thirty days, or if the defendant be liable to be imprisoned, then to arrest and commit him to the jail of the county within thirty days.

**SEC. 1065. [Action on undertaking for stay.]**—When an execution shall be returned unsatisfied for the want of goods and chattels, the justice shall, unless otherwise directed by the party for whom the execution issued, commence an action on the undertaking for the stay of execution, and, so soon as judgment is obtained thereon, shall issue execution, and if such execution be returned unsatisfied in whole or in part, for want of goods and chattels of the bail whereon to levy, then the plaintiff may demand and have execution on the original judgment for the amount remaining due.

**SEC. 1066. [Same—Death of defendant.]**—Where bail is given for the stay of execution, and the defendant against whom the judgment was rendered shall die before the same is satisfied, the creditor may proceed against the surety in the undertaking in like manner as if execution had been issued against the defendant, and returned not satisfied for want of goods and chattels whereon to levy.

#### SALE ON EXECUTION.

**SEC. 1067. [Sale of property—Advertisement—When held.]**—All property taken in execution under the provisions of this title, shall be advertised

for sale at four of the most public places within the precinct where such property was seized, at least ten days previous to the time appointed for such sale, which shall be held within the hours of ten o'clock A. M., and four o'clock P. M., at the house, or on the premises, where such property was taken, or at one of the most public places within the precinct.

**SEC. 1068. [Same—Justice or officer purchasers—Penalty.]**—It shall not be lawful for any justice of the peace who issued the execution, nor for the officer holding the execution, to purchase, either directly or indirectly, any property sold on such execution. And any justice or officer who shall offend against the provisions of this section, shall forfeit and pay, for every such offense, any sum not exceeding one hundred dollars nor less than five dollars, to be recovered by civil action, in the name of the state of Nebraska, before any court having jurisdiction thereof, for the use of the county where such offense was committed; and shall, moreover, be liable to the action of the party injured thereby.

**SEC. 1069. [Keeping stock—Compensation.]**—When any cattle, or other live stock, shall be taken in execution, it shall be the duty of the justice who issued the execution, or other justice charged with the duty of collecting the judgment whereon such execution issued, to allow the officer for keeping the same, a reasonable compensation, to be taxed and collected as other costs in the suit.

**SEC. 1070. [Inventory of property levied on.]**—When a constable or sheriff shall levy on and sell any goods and chattels, he shall make out and annex to his return to the execution in virtue of which such sale was made, a true inventory of all such property, and of each article thereof, and the price at which the same was sold.

**SEC. 1071. [Schedule of goods not sold—Further sale.]**—Where a constable or sheriff shall have levied on any goods and chattels which remain unsold for want of bidders or other just cause, it shall be his duty to return, with the execution, a schedule of all such goods and chattels. And the justice shall, unless otherwise directed by the party for whom such execution issued, or his agent, immediately thereafter issue an order, thereby commanding any officer to whom the same may be directed or delivered, to expose such property for sale; which sale, and the proceedings thereon, shall be the same as if such property had been sold on the original execution.

**SEC. 1072. [Property released on bail.]**—Any officer having levied on goods and chattels, of which he permits the party against whom the execution issued to retain the possession, is hereby authorized to take such security for his own indemnity as he may require that such property shall be delivered at the time and place appointed for the sale thereof.

**SEC. 1073. [Rights of landlord and tenant—Growing crops.]**—In all cases where any lands may have been let, reserving rent in kind, and when the crops or emblements growing or grown thereon shall be levied on or attached, by virtue of any execution, attachment, or any other process against the landlord or tenant, the interest of such landlord or tenant, against whom such process did not issue, shall not be affected thereby.

**SEC. 1074. [Additional writs—When issued.]**—In cases where the constable or sheriff shall make it appear to the satisfaction of the justice that he has been deprived of an opportunity of levying an execution within the time prescribed by this chapter, or otherwise prevented from making the whole of the money therein required to be made, and shall make return to the justice who issued the same, to that effect, such justice is hereby authorized and required to issue further process of execution, for the amount of balance remaining unsatisfied; which shall be served and returned, in all respects, as other executions are under this chapter.

#### CHAPTER XIII.—CONSTABLES AND SHERIFFS.

**SEC. 1075. [Ministerial officers—Jurisdiction.]**—All constables and sheriffs shall be ministerial officers in justices' courts, in their respective counties,

in civil and criminal cases, and civil and criminal process may be executed by them throughout the county.

SEC. 1076. [**Duties.**—It shall be the duty of every constable to serve and execute all warrants, writs, precepts, executions and other process to him directed and delivered, and in all respects whatever to do and perform all things pertaining to the office of constable. And sheriffs shall have all the powers and be subject to all the liabilities of constables in the service and return of all processes issued by justices of the peace in their respective counties.

SEC. 1077. [**Posse comitatus—Return of process.**—In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary. It shall be the duty of every constable or sheriff to make due return of all process to him directed and delivered, at the proper office and on the proper return day thereof; or if the judgment be docketed in the district court, appealed or stayed, upon which he has an execution, on notice thereof to return the execution, stating thereon such fact.

SEC. 1078. [**Receipt of process—Endorsement.**—It shall be the duty of every constable or sheriff, on the receipt of any writ or other process (subpoenas excepted), to note thereon the time of receiving the same; he shall also state in his return on the same, the time and manner of executing it.

SEC. 1079. [**Return of "not found."**—No officer shall make a return on any process of "not found," as to any defendant, unless he shall have been once, at least, to the usual place of residence of the defendant, if such defendant have any in the county.

SEC. 1080. [**Criminal arrests—Keepers of peace.**—It shall be the duty of every constable and sheriff to apprehend, on view or warrant, and bring to justice all felons and disturbers and violators of the criminal laws of this state, to suppress all riots, affrays and unlawful assemblies, which may come to his knowledge, and, generally, to keep the peace in his proper county.

SEC. 1081. [**Constables—Authority—Powers.**—In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend throughout the whole county in which he may be appointed; and in executing and serving process issued by a justice of the peace, he shall have and exercise the same authority and powers over goods and chattels and the persons of parties as is granted by law to a sheriff, under like process issued from courts of record.

SEC. 1082. [**Arrest—Copy of mittimus to jailer—Return.**—When it shall become the duty of the officer to take the body of any person to the jail of the county, he shall deliver to the sheriff or jailer a certified copy of the execution, commitment or other process, whereby he holds such person in custody, and return the original to the justice who issued the same; which copy shall be sufficient authority to the sheriff or jailer to keep the prisoner in jail, until discharged by due course of law.

SEC. 1083. [**Moneys received—Payment.**—Constables and sheriffs shall pay over to the party entitled thereto, all money received by them in their official capacity, if demand be made by such party, his agent or attorney, at any time before he returns the writ upon which he has received it; if not paid over by that time, he shall pay the same to the justice when he returns the writ.

SEC. 1084. [**False return—Penalty.**—Constables and sheriffs shall be liable to twenty per cent. penalty upon the amount of damages for which judgment may be entered against them, for failing to make return, making false return, or failing to pay over money by them collected or received in their official capacity, and such judgment must include, in addition to the damages and costs, the penalty herein provided.

#### CHAPTER XIV.—GENERAL PROVISIONS.

SEC. 1085. [**Application of code.**—The provisions of this code, which are in their nature applicable, and in respect to which no special provision is made by statute, shall apply to proceedings before justices of the peace.

**SEC. 1086. [Justice's docket—Contents.]**—Every justice must keep a book, denominated a docket, in which must be entered by him: *First.* The title of every action in which the writ is served, or where the parties voluntarily appear. *Second.* The date of the writ, the time of its return, and if an order to arrest the defendant or attach property was made, such fact must be stated, together with the affidavit upon which such order was made. *Third.* The filing of the bill of particulars of either party, and the nature thereof, and when not of too great length, the same shall be entered at length on the docket. *Fourth.* Which of the parties, if either of them, appear at the trial. *Fifth.* Every adjournment, stating on whose application, whether on oath or consent, and to what time. *Sixth.* When trial by jury is demanded, the demand must be stated, and by whom made, the names of the jurors selected, and the time appointed for the trial. *Seventh.* The names of the jurors who appear and of those sworn, the names of all witnesses sworn and at whose request. *Eighth.* The exceptions to the ruling of the justice, on questions of law, taken by either party. *Ninth.* The verdict of the jury, and when received; if the jury disagree and are discharged, that fact must be stated. *Tenth.* The judgment of the justice, specifying the items of costs included, and the time when rendered. *Eleventh.* The issuing of execution and orders to sell, when issued and to whom, the renewals thereof, if any, and when made, the return and when made, and a statement of any money paid to the justice, and by whom. *Twelfth.* The giving of a transcript to be filed in the clerks office, and when given. *Thirteenth.* If appeal be taken, the undertaking and the time of entering into the same, and by which party taken. *Fourteenth.* The undertaking for stay of execution, and the time of giving the same. *Fifteenth.* The satisfaction of the judgment, and the time of satisfying the same.

**SEC. 1087. [Same—Entries, when made—Evidence.]**—The several particulars in the last section specified, must be entered under the title of the action to which they relate, and at the time when they occurred, except that bills of exceptions in regard to the rulings on questions of law or evidence, need not be entered until after the judgment, unless required by the justice or one of the parties; such entries in a justice's docket, or a transcript thereof, certified by the justice or his successor in office, shall be evidence to prove the facts stated therein.

**SEC. 1088. [Same—Index—Papers how kept.]**—A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with reference to the page of the entry; the names of the plaintiffs must be entered in the index in the alphabetical order of the first letter of the family names; he shall number the cases progressively upon his docket, and shall correspondingly number the papers in each case; he shall keep the entire papers in each action together, and in packages of a proper and convenient size, and in the order in which the cases are numbered on his docket.

**SEC. 1089. [Same—Delivery to successor.]**—It is the duty of every justice, upon the expiration of his term of office, to deposit with his successor, his official docket, as well his own as those of his predecessor which may be in his custody, together with all files and papers, laws and statutes, pertaining to his office, there to be kept as public records and property. If there be no successor elected and qualified, or if the office become vacant by death, removal from the county, or otherwise, before his successor is elected and qualified, the docket and papers in the possession of such justice must be deposited with the nearest justice in the county, there to be kept until a successor be chosen and qualified, then to be delivered over to such successor on request.

**SEC. 1090. [Same—Receipt.]**—A justice receiving by succession or on deposit, any such docket, papers, and laws, shall, if requested, give a receipt therefor to the person from whom he receives the same.

**SEC. 1091. [Same—Authority of successor.]**—The justice with whom the docket of another may be deposited, either during vacancy or as a successor,

is hereby authorized, while having such docket legally in his possession, to issue execution on any judgment there entered and unsatisfied, and not docketed in the district court, in the same manner and with the same effect as the justice by whom the judgment was rendered might have done; to take bail in appeals or for stay of execution, to issue certified transcripts of judgments on such docket, and proceed in all cases in like manner as if the same had been originally had or instituted before him.

**SEC. 1092. [Disability of justice—Proceedings.]**—In case of sickness or other disability, or necessary absence of a justice, at the time appointed for trial, another justice of the same county may, at his request, attend in his behalf, and shall thereupon become vested with the powers, for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceeding before the attending justice, subscribed by him, must be made in the docket of the justice, before whom the writ was returnable. If the case be adjourned, the justice before whom the summons was returnable must resume jurisdiction.

**SEC. 1093. [Papers containing blanks void.]**—The summons, execution and every other paper made or issued by a justice, must be filled up without a blank to be filled by another; otherwise it is void.

**SEC. 1094. [Deputation to serve process.]**—A justice, at the request of a party, and on being satisfied that it is expedient, may specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order to arrest the defendants or to attach property. Such deputation must be in writing on the process.

**SEC. 1095. [Same—Fees.]**—The person so deputed has the authority of a constable, in relation to the service, execution, and return of such process, and is subject to the same obligation, but there can be no fee for his services taxed in the bill of costs.

**SEC. 1096. [Contempts punishable.]**—A justice may punish as for contempt, persons guilty of the following acts, and no others: *First.* Disorderly, contemptuous, or insolent behavior toward the justice, tending to interrupt the due course of the trial, or other judicial proceedings before him. *Second.* A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding. *Third.* Wilful resistance in the presence of the justice, to the execution of a lawful order or process made or issued by him.

**SEC. 1097. [Same—Arrest—Punishment.]**—A warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him or may convict him for the offense and adjudge a punishment by fine or imprisonment, or both; such fine not to exceed twenty dollars, and such imprisonment ten days.

**SEC. 1098. [Same—Entry of judgment—Warrant.]**—The conviction, specifying particularly the offense and the judgment thereon, must be entered in his docket; a warrant of commitment to the jail of the county, until the fine be paid, or for the term of imprisonment, may then be issued; such warrant must contain a transcript of the entry in the docket, and the same must be executed by any constable or sheriff to whom it may be given, and by the jailer of the county.

**SEC. 1099. [Security for costs—Non-resident.]**—When a person intending to bring an action before a justice of the peace, is a non-resident of the county in which he intends to commence such action, the justice may, previous to his issuing process, require such person to give security for costs of suit; which may be done by depositing a sum of money, deemed by the justice to be sufficient to discharge the costs that may accrue in the action, or by giving an undertaking, with security approved by the justice, payable to the adverse party, for the payment of all costs that may accrue in the action. If any plaintiff or plaintiffs,

after commencing an action before a justice in the county in which he or they reside, afterwards remove out of the county, the justice may require such plaintiff or plaintiffs to deposit a sum of money, equal to the costs that have accrued, and that probably will accrue, or require, in place thereof, that such party give sufficient security for all costs that have accrued, or which may accrue in the action, and in default to do either, shall enter a nonsuit against the plaintiff or plaintiffs.

**SEC. 1100. [Evidence of debt—Filing.]**—In all actions instituted before a justice of the peace, founded upon any bond, bill, promissory note, or other instrument of writing, for the payment of a sum of money certain, of which the whole amount of money promised therein is due, it shall be the duty of the plaintiff, his agent or attorney, to file said bond, bill, promissory note, or other written evidence of indebtedness, upon which said suit is brought, with such justice of the peace; and if upon the trial, judgment shall be entered thereon, in favor of the plaintiff, such bond, bill, promissory note, or other instrument in writing, shall be retained by the justice so rendering judgment, who shall endorse thereon the sum for which he shall have entered judgment (provided the same shall in no wise exceed one hundred dollars), and shall subscribe his name thereto. And upon payment, or tender of the amount of such payment, together with the costs accruing thereon, or securing the payment of the same by putting in bail for the stay of execution, it shall not be lawful for the plaintiff to institute any other suit or suits upon such bond, bill, promissory note, or other instrument of writing, for the recovery of any other sum or sums, the payment of which is secured by the same bond, bill, promissory note, or other written evidence of indebtedness; *Provided*, That when an appeal shall be taken from the judgment of such justice, it shall be his duty to transmit any bond, bill, promissory note, or other written evidence produced before him on trial, to the clerk of the district court, to which such cause shall have been appealed, or or before the second day of the term of the court next after taking such appeal; *Provided, also*, That nothing herein contained shall be construed to lessen or in anywise affect the right which any creditors now have to demand from any justice of the peace, any joint and several obligation, for the purpose of prosecuting any party to said obligation, other than the party against whom judgment may have been rendered.

**SEC. 1100 a. [Proof of written instrument.]**—That in all civil actions before justices of the peace, in which the defendant has been served with summons in this state, it shall not be necessary to prove the execution of any bond, promissory note, bill of exchange, or other written instrument, or any indorsement thereon, upon which the action is brought, or set-off or counter-claim is based, unless the party sought to be charged as the maker, acceptor, or indorser, of such bond, promissory note, or bill of exchange, or other written instrument, shall make and file with the justice of the peace, before whom the suit is pending, an affidavit that such instrument was not made, given, subscribed, accepted, or indorsed by him. [G. S. § 1, 717.]

**SEC. 1101. [Justice purchasing judgment—Penalty.]**—It shall not be lawful for any justice of the peace to purchase any judgment upon any docket in his possession; and for so doing, and for every such offense, such justice shall forfeit and pay a sum not more than fifty dollars, nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected, shall be paid into the treasury of the county where such offense was committed.

**SEC. 1102. [Application of code to pending suits.]**—The provisions of this title do not apply to proceedings in actions or suits pending when it takes effect. They shall be conducted to final judgment and determination in all respects as if it had not been adopted.

**SEC. 1100.** If debtor pays money after note is filed with justice, the money would be received in his official capacity, and his sureties liable. But not for money paid him on note left in his hands for collection without suit. 10 Feb. 490.

**SEC. 1100 a.** "An act concerning the mode of proving written instruments before justices of the peace" Approved and took effect Feb. 18, 1873. G. S. 717.



**SEC. 1103. [Jurisdiction.]**—Justices of the peace shall have jurisdiction in all cases where the sum in question does not exceed two hundred dollars except in cases limited in this title. [Amended Feb. 28. Took effect June 1, 1881.]

#### TITLE XXXI.—MISCELLANEOUS PROVISIONS.

**SEC. 1104. [Pending chancery cases.]**—**SEC. 4.** The final orders or decrees of chancery heretofore rendered, or which may hereafter be rendered, in any chancery proceedings pending at the time this act shall take effect, may be enforced or reviewed in the same manner, and within the same time, as if this act had not taken effect; and all suits in chancery pending at the time of the taking effect of this act may be prosecuted to final decree in like manner. [1867, 71.]

**SEC. 1105. [Definitions.]**—**SEC. 5.** The words hereinafter found in the code of civil procedure, shall be construed and held to mean as follows, to wit: "complainant" shall mean plaintiff; "bill" or "complaint" shall mean petition; "suit" shall mean action or civil action; and "decree" shall mean judgment; and all other words and terms found in said code of civil procedure, heretofore applicable to the chancery practice hereby repealed, shall be so construed and held as to carry out the intention of this act, prevent a failure of justice, and give adequate relief in all cases. [Id.]

#### SUITS BY AND AGAINST STATE.

**SEC. 1106. [District court—Jurisdiction.]**—**SEC. 1.** That the several district courts of the judicial districts of the state as now provided for and established by the constitution of the state, and of such judicial districts as may hereafter be provided by law, shall have jurisdiction to hear and determine the following matters: *First.* All claims against the state filed therein, which have previously been presented to the auditor of public accounts, and have been in whole or in part rejected or disallowed. *Second.* All claims or petitions for relief that may be presented to the legislature, and which may be by any law, or by any rule or resolution of the legislature, or either house thereof, referred to either of said courts for adjudication. *Third.* Of all set-offs, counter-claims, claims for damages, liquidated or unliquidated, on the part of the state, against any person making a claim against the state, or against the person in whose favor such claim arose. [1877, 19.]

**SEC. 1107. [Petition.]**—**SEC. 2.** The claimant shall, in all cases, file a petition, setting forth the facts out of which his claim originally arose; the action of the legislature, or of either house thereof, or of any department of government thereon, if any such has been had; what person or persons, is the owner, or are owners thereof, or in anywise interested therein; that no assignment or transfer of the same, or any part thereof, or interest therein, has been made, except as stated in the petition; and that the claimant is justly entitled to the amount claimed therein from the state after allowance of all just credits and set-offs. The petition shall be verified as now required in civil actions in the district courts.

**SEC. 1108. [Summons—Service.]**—**SEC. 3.** Summons shall issue upon the filing of such petition, and shall be served upon the state by the sheriff of the county in which the petition may be filed, by serving the same upon the governor and attorney general; and in any action, the subject matter of which, in whole or in part, relates to or grew out of the conduct of any special department or institution of the government, summons shall also be served by such sheriff, upon the chief officer of such department or institution, and the return day thereof shall be as now provided by law in other actions in the district courts.

SECS. 1104, 1105. Being sections 4 and 5 of "An act to amend the code of civil procedure by abolishing the distinction between actions at law and suits in equity," Laws 1867 p. 71. The first section amended sec. 2. The second section repealed secs. 2, 87 and Title 24. The third section amended sec. 87. The sixth section provided for appeals to supreme court but was repealed 1871, p. 113. See also 3 Neb. 453. 4 Neb. 569. 6 Neb. 84.

SECS. 1106-1122. "An act to provide in what courts the state may sue and be sued." 1877, 19. Construction of act. 7 Neb. 89, 108, 109, 113. 8 Neb. 218.

**Sec. 1109. [Trial—Judgment—Review.]—**Sec. 4. The court in which such action may be brought shall hear and determine the matter upon the testimony according to justice and right, as upon the amicable settlement of a controversy, and shall render award and judgment against the claimant, or the state, as upon the testimony right and justice may require. Either party may take their judgment, by proceedings in error, to the supreme court for review.

**Sec. 1110. [Judgment certified to legislature.]—**Sec. 5. On the first day of each regular session of the legislature the clerks of the several district courts shall transmit a full and complete statement of all claims adjudicated in said courts during the two years previous, certified by himself and signed by the judge of such court, showing the claimant, the amounts claimed and the judgment rendered for or against the claimant.

**Sec. 1111. [Place of trial.]—**Sec. 6. The state may be sued in the district court of the county wherein the capital is situate, in any matter founded upon or growing out of a contract, expressed or implied, originally authorized or subsequently ratified by the legislature, or founded upon any law of the state. The petition in such a case shall be as provided in section two of this act, summons shall issue and be served in the same manner as hereinbefore provided, and the rules of pleading and practice in regard to other civil actions in the district court shall be observed in all actions by or against the state, as far as applicable, except as otherwise herein provided.

**Sec. 1112. [Set-off against state.]—**Sec. 7. In any civil action instituted by the state, except in actions for the collection of revenue, or for school or other trust funds, or against defaulting officers and their bondsmen, the defendant may, as matter of defense, plead any set-off, counter claim or cross demand that he may have arising to him in his own right, and upon which an action could be maintained by him against the state.

**Sec. 1113. [Priority of trial—Attendance of witnesses.]—**Sec. 9. Civil actions to which the state is a party shall, on motion of counsel on behalf of the state, have priority of trial over other civil actions; and the several district courts having jurisdiction to try actions to which the state is a party, shall have power to compel attendance of witnesses, as is now had by such courts in other civil actions, and on payment of fees and mileage by the party desiring their attendance, may compel the attendance of witnesses from any county within the state.

**Sec. 1114. [Fraud in proof of claim—Penalty.]—**Sec. 9. Any person who corruptly practices, or attempts to practice, any fraud against the state in the proof, statement, establishment or allowance of any claim or cause of action, or any part thereof, in the matter out of which the same arose, shall *ipso facto* forfeit the same to the state; and it shall be the duty of the court in such case to find specifically that fraud was practiced, or attempted to be practiced, and to render judgment of forfeiture, and that the claimant be forever barred from prosecuting the same against the state, and for costs.

**Sec. 1115. [Fees of officers.]—**Sec. 10. The fees of sheriff, the clerk, or other officers, or of witnesses in claims or suits to which the state is a party, shall be the same, and be paid and taxed in the same manner as in other civil actions in the district courts.

**Sec. 1116. [Attorney for state.]—**Sec. 11. It shall be the duty of the attorney general to appear and defend actions or claims against the state. He may require the assistance of the district or prosecuting attorney of the district or county wherein the action is brought, and in any case of importance or difficulty the governor or chief officer of the department or institution to which it relates, may retain and employ a competent attorney to appear on behalf of the state.

**Sec. 1117. [Judgment certified to auditor—Payment—Stay.]—**Sec. 12. The court by which any judgment is rendered against the state, shall certify the same to the auditor of public accounts, who shall pay the same from any special fund or appropriation applicable thereto, and if none such have been provided or made, then from any appropriations made to the department or insti-

tution, relating to which the cause of action arose; *Provided*, That a certificate of the auditor of public accounts or of the chief officer of such department or institution that the current appropriations will not permit the payment of such judgment without great public inconvenience, shall operate as a stay of such judgment until the adjournment of the next regular session of the legislature; and in case of such stay being claimed or taken, interest shall run on such judgment from its date at the rate of ten per centum per annum.

SEC. 1118. [**Same—Against claimant—Docketed where.**—SEC. 13. In any action in which a judgment is rendered in any sum, or for costs against the claimant, the clerk of the court in which such judgment was rendered shall make and transmit a certified copy thereof on application of the attorney general, or other counsel on behalf of the state, to the clerk of the district court of any county within the state, and the same shall thereupon be filed and docketed in such court and become and be a judgment thereof; and all judgments against the claimant or plaintiff shall be collected by execution as other judgments in the district courts.

SEC. 1119. [**Error—Appeal—Proceedings—Supersedeas.**—SEC. 14. Proceedings in error or appeal from the several district courts to the supreme court, as in other civil cases, may be taken by either party within the same limitations of time as in other civil actions. No appeal or supersedeas bond shall be required of the state, and the filing of notice signed by the governor, or chief officer of the proper department, or by the attorney general, or counsel for the state, of intention to take such proceedings, shall operate as a supersedeas of such judgment, and until the time that final judgment in the court of review be rendered in said cause, but the same shall not so operate longer than six months, unless proceedings in error or appeal are taken, and in case of the affirmance of such judgment or failure on the part of the state to take proceedings in error or appeal, after notice thereof, interest shall run and be computed on such judgment from its date.

SEC. 1120. [**Payment—Bar of claim.**—Payment and receipt of the amount due on any judgment rendered in any action brought under the provisions of this act, shall be a full discharge of the state in such matter, and any final judgment shall forever bar further controversy upon the subject thereof.

SEC. 1121. [**Action, when brought—Limitation.**—SEC. 16. Every claim and demand against the state shall be forever barred, unless action be brought thereon within two years after the claim arose; *Provided*, That claims now subsisting shall not be barred until two years after the taking effect of this act, and every claim and demand in behalf of the state except for revenue, or upon official bonds, or for loans or moneys belonging to the school fund, or loans of school or other trust funds, or to lands or interest in lands thereto belonging, shall be barred by the same lapse of time as is provided by the law in case of like demands between private parties; *Provided, however*, That in any action on behalf of the state the defendant may plead and avail himself of any set-off or counter claim growing out of or connected with the same matter or transaction upon which action is brought against him. [Amended and took effect Feb. 28, 1881.]

SEC. 1122. [**Change of venue.**—SEC. 17. Change of venue may be taken from the district court of the county in which the action is brought as in other civil cases, on payment of the costs of removal, by the party making application for such change of venue.



## PART III.

### CRIMINAL CODE.

#### PART I.—CRIMES AND OFFENSES.

##### CHAPTER I.—ACCESSORIES IN FELONY.

**SECTION 1. [Aiding and abetting felony.]**—If any person shall aid, abet, or procure any other person to commit any felony, every person so offending shall, upon conviction thereof, be imprisoned in the penitentiary for any time between the respective periods for which the principal offenders could be imprisoned for the principal offense; or, if such principal offender would on conviction be punishable with death, or be imprisoned for life, then such aider, abettor, or procurer, shall be punished with death, or be imprisoned for life, the same as the principal offender would be. [G. S. § 1, 719.]

**SEC. 2. [Accessories after the fact.]**—An accessory after the fact is a person who, after full knowledge that a felony has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person found guilty of being an accessory after the fact, shall be imprisoned in the jail of the county for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime.

##### CHAPTER II.—HOMICIDE AND FETICIDE.

**SEC. 3. [Murder, first degree.]**—If any person shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate any rape, arson, robbery, or burglary, or by administering poison, or causing the same to be done, kill another; or, if any person, by wilful and corrupt perjury, or by subornation of the same, shall purposely procure the conviction and execution of any innocent person; every person so offending shall be deemed guilty of murder in the first degree, and, upon conviction thereof, shall suffer death.

**SEC. 4. [Murder, second degree.]**—If any person shall purposely and maliciously, but without deliberation and premeditation, kill another, every such person shall be deemed guilty of murder in the second degree; and on conviction

NOTE.—“An act to establish a criminal code.” Passed March 4. Took effect Sept. 1. 1873. G. S. 719. Provisions relative to costs are embraced in title and are constitutional. 10 Neb. 300.

SEC. 3. Intoxication is no excuse. 9 Neb. 253. But it may be taken into consideration as a circumstance to show that the act was not premeditated. Id. 4 Neb. 289. Evidence must show that party accused perpetrated the act purposely, that he did it with the intent to kill, and of deliberate and premeditated malice. 8 Neb. 139. Where prosecution establishes an intentional homicide, and nothing explanatory is shown, the implication of malice arises, which it is incumbent upon the prisoner to remove. 8 Neb. 339. The act being unlawful, malice is presumed. 9 Neb. 248. And to make the act murder in the first degree it is only necessary to establish that it was done with deliberation and premeditation, of which there being some evidence before the jury their verdict fixing that as the degree of criminality is conclusive on that point. Id. Facts showing that the prisoner was accessory only, will not warrant a conviction under an indictment for murder. 8 Neb. 82. Evidence merely showing presence of accused, at time of the murder, without more, is not sufficient to make him a principal therein. Id. 88. On trial of husband for the murder of his wife evidence of his improper devotions to, and criminal intercourse with another woman is admissible as tending to show motive. 8 Neb. 411. An instruction that leaves the jury at liberty to presume “premeditated malice” from the fact of a deliberate intention unlawfully to kill” alone, is erroneous. 9 Neb. 303. Indictment should contain a certain description of the crime and the facts constituting it. 2 Neb. 162. Where, on a trial for murder, there is testimony tending to show that the accused acted in self defense, it must be submitted to the jury to be given such credit as they may think it entitled to. 9 Neb. 165.

SEC. 4. When the fact of killing is shown and no explanatory circumstance is proven, malice is presumed and the crime is murder in the second degree. 5 Neb. 384. 6 Neb. 140. 9 Neb. 303.

thereof, shall be imprisoned in the penitentiary not less than ten years, or during life, in the discretion of the court.

SEC. 5. [**Manslaughter.**—If any person shall unlawfully kill another without malice, either upon a sudden quarrel, or unintentionally, while the slayer is in the commission of some unlawful act, every such person shall be deemed guilty of manslaughter; and, upon conviction thereof, shall be imprisoned in the penitentiary, not more than ten years nor less than one year.

SEC. 6. [**Foeticide—Homicide in committing same.**—Any physician or other person who shall administer, or advise to be administered, to any pregnant woman with a vitalized embryo, or foetus, at any stage of utero gestation, any medicine, drug, or substance whatever, or who shall use or employ, or devise to be used or employed, any instrument or other means with intent thereby to destroy such vitalized embryo, or foetus, unless the same shall have been necessary to preserve the life of the mother, or shall have been advised by two physicians to be necessary for such purpose, shall in case of the death of such vitalized embryo, or foetus, or mother, in consequence thereof, be imprisoned in the penitentiary not less than one nor more than ten years.

### CHAPTER III.—FIGHTING BY AGREEMENT.

SEC. 7. [**Prize fighting.**—If any person shall actually engage as a principal in any premeditated fight or contention, commonly called a prize fight, every person so offending shall be imprisoned in the penitentiary, not less than one year nor more than ten years, and pay the costs of prosecution.

SEC. 8. [**Aiders and abettors.**—If any person shall engage, or be concerned in, or attend any such fight or contention as is described in the last preceding section, as backer, trainer, second, umpire, assistant, or reporter, every person so offending shall, on conviction, be fined in any sum not less than five dollars, nor more than one hundred dollars, and imprisoned in the jail of the county not less than ten days nor more than three months, and pay the cost of prosecution. [Amended 1875, 2.]

SEC. 9. [**Duelling.**—If any person shall engage in or fight a duel with another, or shall be second to such person who shall fight a duel, or if any person shall, by word, message, letter, or in any other way, challenge another to fight a duel, or shall accept a challenge to fight a duel, although no duel be fought, or shall, knowingly, be the bearer of such challenge, or shall advise, prompt, encourage, or persuade any person to fight a duel, or challenge another to fight a duel, whether such duel be fought or not; every person so offending shall be imprisoned in the penitentiary, not more than ten years nor less than one year, and shall forever after be incapable of holding any office of honor, profit, or trust, within this state; *Provided, however,* If death ensue from such duel, the person or persons concerned shall be deemed guilty of murder, and shall be punished for murder in the first or second degree (as the case may be), as is provided in this act anything in this section to the contrary notwithstanding.

SEC. 10. [**Affray.**—If any two persons shall agree and wilfully fight or box at fisticuffs, the persons so offending shall be deemed guilty of an affray, and, upon conviction thereof, shall be fined, each, in a sum not exceeding fifty dollars, or be imprisoned in the county jail, not exceeding ten days, or both, at the discretion of the court.

### CHAPTER IV.—VIOLENCE TO PERSONS, NOT RESULTING IN DEATH.

SEC. 11. [**Rape upon daughter or sister.**—If any person shall have carnal knowledge of his daughter or sister, forcibly, and against her will, every such person so offending shall be deemed guilty of a rape, and shall be imprisoned in the penitentiary during life.

SEC. 12. [**Rape upon other female.**—If any person shall have carnal

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SEC. 12. Rape defined. 6 Neb. 282. Injured party a competent witness, her credibility being left to the jury. Conviction may be had on testimony of prosecutrix alone. Id. 283.

knowledge of any other woman, or female child, than his daughter or sister, as aforesaid, forcibly, and against her will, or if any male person, of the age of seventeen years and upward, shall carnally know or abuse any female child, under the age of ten years, with her consent, every such person so offending shall be deemed guilty of a rape, and shall be imprisoned in the penitentiary, not more than twenty nor less than three years.

SEC. 13. [**Robbery.**—If any person shall forcibly, and by violence, or by putting in fear, take from the person of another, any money or personal property, of any value whatever, with the intent to rob or steal, every person so offending shall be deemed guilty of robbery, and, upon conviction thereof, shall be imprisoned in the penitentiary, not more than fifteen nor less than three years.

SEC. 14. [**Felonious assault.**—If any person shall assault another with intent to commit a murder, rape, or robbery, upon the person so assaulted, every person so offending shall be imprisoned in the penitentiary, not more than fifteen nor less than two years.

SEC. 15. [**Maiming and disfiguring.**—If any person shall voluntarily, unlawfully, and on purpose, cut or bite the nose, lip or lips, ear or ears, or cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, cut or disable any limb or member of any person, with intent to murder, kill, maim, or disfigure such person, every person so offending shall be imprisoned in the penitentiary, not more than twenty years nor less than one year.

SEC. 16. [**Shooting and stabbing, with intent to wound.**—If any person shall maliciously shoot, stab, cut, or shoot at, any other person, with intent to kill, wound, or maim such person, every person so offending shall be imprisoned in the penitentiary, not more than twenty years nor less than one year.

SEC. 17. [**Assault and battery—Menacing threat.**—If any person shall unlawfully assault or threaten [another] in a menacing manner, or shall unlawfully strike or wound another, the person so offending shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars, or imprisoned in the jail of the county not exceeding three months, or both, in the discretion of the court, and shall, moreover, be liable to the suit of the party injured. [Amended 1875, 2.]

SEC. 18. [**Kidnapping.**—Any person or persons who shall kidnap, or forcibly or fraudulently carry off or decoy out of this state any person or persons, or shall arrest or imprison any person or persons, with the intention of having such person or persons carried out of the state, unless it be in pursuance of the laws thereof, shall be confined in the penitentiary not less than three nor more than seven years, and shall, moreover, be liable for the costs of prosecution.

SEC. 19. [**False imprisonment.**—False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment, shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding one year in the county jail.

SEC. 20. [**Child stealing.**—Every person who shall maliciously or forcibly or fraudulently lead, take or carry away, or decoy or entice away, any child under the age of ten years, with intent unlawfully to detain or conceal such child from its parent or parents, or guardian, or other person having the lawful charge of such child, shall be imprisoned in the penitentiary not more than seven years nor less than one year.

SEC. 14. In an indictment for an assault with intent to commit murder it is necessary to allege the assault as having been made purposely and maliciously; but it is no objection to the indictment that it also charges the malice to have been deliberate and premeditated. 4 Neb. 552. To constitute an assault with intent to commit rape, there must have been an intent and that intent manifested by an assault for that purpose upon the person intended to be ravished. 6 Neb. 282. A count for an assault with intent to commit a rape may be joined with a count for rape itself. Id. 284. An assault with intent to commit murder is but one offense and if indictment contains no other, a general verdict of guilty is good. 5 Neb. 418. Physicians may testify what in their opinion would be the natural and probable results of injuries inflicted by the accused upon the person assaulted. Id.

SEC. 16. In an indictment containing two counts, one for malicious shooting with intent to kill, and the other for malicious shooting with intent to wound, the defendant is not entitled to an order compelling the prosecutor to elect on which count he would proceed. 8 Neb. 486.

**SEC. 21. [Aiding and abetting same.]**—Every person who shall harbor or conceal, with intent to detain from its parent or parents, or guardian, any child under the age of ten years, so led, taken, carried, decoyed or enticed away, as in the preceding section specified, shall, upon conviction thereof, be imprisoned in the penitentiary not more than seven years nor less than one year.

#### CHAPTER V.—OFFENSES AGAINST PUBLIC PEACE AND JUSTICE.

**SEC. 22. [Treason.]**—Any person or persons residing in this state, who shall levy war against this state, or the United States of America, or shall knowingly adhere to the enemies of this state, or the United States, giving them aid and comfort, shall be deemed guilty of treason against the state of Nebraska, and shall be imprisoned in the penitentiary during life.

**SEC. 23. [Accessories.]**—Any person or persons residing within this state, who shall surrender or betray, or be in any way concerned in the surrendering or betraying any military post, fortification, arsenal or military stores of this state, or the United States, into the possession or power of any enemies of either, or shall supply arms or ammunition, or military stores to such enemies, or who shall unlawfully and without authority, usurp possession and control of any such military post, fortification, arsenal or military stores, or having knowledge of any treason against this state or the United States, shall wilfully omit or refuse to give information thereof to the governor, or some judge of this state, or to the president of the United States, shall be imprisoned in the penitentiary not less than ten years nor more than twenty years.

**SEC. 24. [Military expeditions against other states.]**—If any person shall, within this state, begin or set on foot, or provide or prepare the means for any unauthorized military expedition or enterprise, to be carried on from thence against the territory or people of any of the United States, every person so offending shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

**SEC. 25. [Carrying concealed weapons.]**—Whoever shall carry a weapon or weapons, concealed on or about his person, such as a pistol, bowie-knife, dirk, or any other dangerous weapon, on conviction of the first offense shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days, and for the second offense not exceeding one hundred dollars or imprisoned in the county jail not more than three months, or both, at the discretion of the court; *Provided, however,* If it shall be proved from the testimony on the trial of any such case, that the accused was, at the time of carrying any weapon or weapons as aforesaid, engaged in the pursuit of any lawful business, calling or employment, and the circumstances in which he was placed at the time aforesaid were such as to justify a prudent man in carrying the weapon or weapons aforesaid, for the defense of his person, property or family, the accused shall be acquitted. [Amended 1875, 8.]

**SEC. 26. [Unlawful assembly and rout.]**—If three or more persons shall assemble together with intent to do any unlawful act, with force and violence, against the person or property of another, or to do any unlawful act against the peace; or, being lawfully assembled, shall agree with each other to do any unlawful act as aforesaid, and shall make any movement or preparation therefor, the persons so offending, shall be fined in any sum not exceeding one hundred dollars, and be imprisoned in the jail of the county not exceeding three months. [Id.]

**SEC. 27. [Proclamation dispersing rioters—Disobedience—Power of the county—Persons refusing assistance.]**—Whenever three or more persons shall be assembled as aforesaid, and proceed to commit any of the offenses aforesaid, it shall be the duty of all judges, justices of the peace, and sheriffs, and all ministerial officers, immediately, upon actual view, or as soon as may be, on information, to make proclamation in the hearing of such offenders, commanding them in the name of the state of Nebraska, to disperse and depart to their several homes or lawful employments; and if, upon such proclamation,



such persons shall not disperse and depart as aforesaid, it shall be the duty of such judges, justices of the peace, and sheriffs, and all other ministerial officers, respectively, to call upon all persons near, and, if necessary, throughout the county, to aid and assist in dispersing and taking into custody all persons assembled as aforesaid; and military officers and others, called on as aforesaid, and refusing to render immediate assistance, shall each be fined in any sum not exceeding twenty-five dollars.

**SEC. 28. [Riot—Obstructing authorities—Refusing to disperse.]**—If any person shall forcibly obstruct any of the authorities aforesaid, or if any three or more persons shall continue together after proclamation made as aforesaid, or attempted to be made, and prevented by such rioters; or, in case of the proclamation, any three or more persons, being assembled as aforesaid, shall commit any unlawful act as aforesaid, every such offender shall be fined in any sum not exceeding one hundred dollars, and imprisoned in the jail of the county not exceeding three months; and shall, moreover, find security for good behavior and to keep the peace, for a time not exceeding one year. [Amended 1875, 3.]

**SEC. 29. [Rioters injured in resisting officers, slayer held guiltless.]**—If any of the persons so unlawfully assembled, shall be killed, maimed, or otherwise injured, in consequence of resisting the judges or others in dispersing and apprehending them, or in attempting to disperse and apprehend them, said judges, justices of the peace, sheriffs and other ministerial officers, and others acting by their authority, or the authority of either of them, shall be holden guiltless; *Provided*, Such killing, maiming, or injury shall take place in consequence of the use of necessary and proper means to disperse or apprehend any such persons so unlawfully assembled.

**SEC. 30. [Resisting and abusing officers.]**—If any person shall abuse any judge or justice of the peace, resist or abuse any sheriff, constable or other officer, in the execution of his office the person so offending, shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the jail of the county not exceeding three months, or both, at the discretion of the court. [Amended 1875, 4.]

**SEC. 31. [Rescuing by force.]**—If any person shall rescue, by force, any offender, charged with, or convicted of, any offense, by the laws of this state made punishable with imprisonment, from any jail or other place of confinement, or from the custody of any officer, or other person charged with the safe keeping of such offender; every person so offending, shall be fined in any sum not exceeding five hundred dollars, and be imprisoned in the jail of the county not exceeding thirty days.

**SEC. 32. [Disturbing religious meetings.]**—If any person or persons shall at any time interrupt or molest any religious society or any member thereof; or any persons when meeting or met together, for the purpose of worship, or performing any duties enjoined on, or appertaining to them, as members of such society; the person or persons so offending shall be fined in any sum not exceeding twenty dollars; *Provided*, That this section shall not be so construed, as to deprive any religious society of the right of laying hands upon the person or persons who may be disturbing the congregation, and turning him or them out of the church or place of worship.

**SEC. 33. [Exciting disturbance at tavern or meeting of citizens.]**—If any person or persons shall be found making or exciting any contention or disturbance at any tavern, court, election, or other meetings of the citizens for the purpose of transacting or doing any business appertaining to, or enjoined on them; the person or persons so offending, shall be fined in any sum not exceeding five dollars, nor less than fifty cents, each, and, if necessary, imprisoned until such meeting shall be ready to disperse.

**SEC. 34. [Disturbing school, society, or meeting, etc.]**—If any per-

SEC. 34. Person charged with disturbance of public school may prove that he was a member of school board and that what he did was in pursuance to an order of the board and in the honest discharge of his official duty. 6 Neb. 172.

son or persons shall hereafter wilfully disturb, molest, or interrupt any literary society, school, or society formed for the intellectual improvement of its members, or any other school or society organized under any law of this state, or any school, society, or meeting, formed or convened for improvement in music, letters, or for social amusement, such person or persons so offending shall be fined in any sum not less than five, nor more than twenty dollars.

**SEC. 35. [Molesting county surveyor].**—If any county surveyor, or deputy surveyor, shall be molested or prevented from doing or performing any of his official duties, by means of the threats or improper interference of any person or persons, such surveyor shall call on the sheriff of the county, who shall accompany him, and remove all force; and the person or persons thus threatening, or improperly interfering with any surveyor, while performing his official duties, shall be fined in a sum not exceeding one hundred dollars; and, moreover, be liable for all damages by any person sustained by the hindrance of the surveyor, and also for all expenses and costs that may accrue in consequence of the attendance of the sheriff.

**SEC. 36. [Neglect by conservators of the peace].**—If any judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined not exceeding one hundred dollars.

**SEC. 37. [Influencing witness, juror, or officer—Obstructing administration of justice].**—If any person or persons shall, corruptly or by threats, or force, endeavor to influence, intimidate, or impede any juror, witness or officer, in any court of this state, in the discharge of his duty, or shall corruptly, or by threats or force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending, shall be punished by fine, not exceeding one hundred dollars, or by imprisonment, not exceeding twenty days, or both.

#### CHAPTER VI.—ATTEMPTS AND INDUCEMENTS TO POISONING AND ABORTION.

**SEC. 38. [Poisoning with intent, etc.].**—If any person or persons shall administer poison to another with the intent to destroy or take the life of the person or persons to whom the same shall be administered, or do him, her, or them, an injury, or if any person or persons, shall mix poison in water, food, drink, or medicine with the aforesaid intent, the person or persons so offending, their aiders and abettors, shall be imprisoned in the penitentiary, not more than fifteen nor less than two years.

**SEC. 39. [Attempting to procure abortion].**—Any physician, or other person, who shall wilfully administer to any pregnant woman any medicine, drug, substance, or thing whatever, or shall use any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall be punished by imprisonment in the county jail, not more than one year, or by fine, not exceeding five hundred dollars, or by both such fine and imprisonment.

**SEC. 40. [Administering medicine while intoxicated].**—If any physician, or other person, while in a state of intoxication, shall prescribe any poison, drug, or medicine, to another person, which shall endanger the life of such other person, he shall be punished by a fine of not more than one hundred dollars.

**SEC. 41. [Administering secret medicine].**—If any physician, or other person, shall prescribe any drug or medicine to another person, the true nature and composition of which he does not, if inquired of, truly make known, but avow the same a secret medicine or composition, thereby endangering the life

of such other person, he shall be fined in any sum not exceeding one hundred dollars.

**SEC. 42. [What done when poisons sold.]**—Every apothecary, druggist, or other person, who shall sell or give away, except upon the prescription of a physician any article or articles of medicine belonging to the class usually known as poisons, shall be required: *First.* To register, in a book kept for that purpose, the name, age, sex, and color of the person obtaining such poison. *Second.* The quantity sold. *Third.* The purpose for which it is required. *Fourth.* The day and date on which it was obtained. *Fifth.* The name and place of abode of the person for whom the article is intended. *Sixth.* To carefully mark the word "poison" upon the label or wrapper of each package. *Seventh.* To neither sell or give away any article of poison to minors of either sex.

**SEC. 43. [Indigo or soot to be mixed with arsenic.]**—No apothecary, druggist, or other person, shall be permitted to sell, or give away, any quantity of arsenic less than one pound, without first mixing either soot or indigo therewith, in the proportion of one ounce of soot or half an ounce of indigo to the pound of arsenic.

**SEC. 44. [Penalty for violation of two preceding sections.]**—Any person offending against the provisions of either of the last two preceding sections, shall be fined in any sum not less than twenty nor more than one hundred dollars. [Amended 1875, 4.]

**SEC. 45. [Advertisement or sale of secret drug, etc., for females—Obscene notices.]**—If the publishers of any newspaper in the state, shall print or publish any advertisement of any secret drug or nostrum, purporting to be exclusively for the use of females, or if any druggist or other person shall sell or keep for sale, or shall give away any such secret drug or nostrum, purporting to be exclusively for the use of females; or if any person shall, by printing or writing, or in any other way publish an account or description of any drug, medicine, instrument, or apparatus for the purpose of preventing conception, procuring abortion, or miscarriage, or shall, by writing or printing in any circular, newspaper, pamphlet, or book, or in any other way publish or circulate any obscene notice, or shall, within the state of Nebraska, keep for sale or gratuitous distribution, any newspaper, circular, pamphlet, or book containing such notice of such drugs, instruments, or apparatus, or shall keep for sale, or gratuitous distribution any secret nostrum, drug, or medicine for the purpose of preventing conception, procuring abortion, or miscarriage; such person or persons so violating any of the provisions of this section, shall be fined in any sum not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding six months, or both, at the discretion of the court; *Provided,* That nothing in this section shall be so construed as to affect teaching in regular chartered medical colleges, or the publication of standard medical books.

## CHAPTER VII.—LIBEL AND THREATENING LETTERS.

**SEC. 46. [Threatening letter.]**—If any person shall, knowingly, send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, containing wilful and malicious threats of injury of any kind whatever, or with intent, or for the purpose of extorting money, or other valuable things, from any person; every person so offending, shall be fined in any sum not less than fifty, nor more than five hundred dollars, or be imprisoned in the jail of the county, not exceeding ten days, or both, at the discretion of the court.

**SEC. 47. [Libel.]**—If any person shall write, print or publish any false or malicious libel of, or concerning another, or shall cause or procure any such libel to be written, printed, or published; every person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding six months, or both, at the discretion of the court, and moreover, be liable to the party injured.

## CHAPTER VIII.—BREAKING AND ENTERING BUILDINGS.

SEC. 48. [**Burglary.**—If any person shall, in the night season, wilfully, maliciously and forcibly break and enter into any dwelling house, kitchen, smoke house, shop, office, store house, mill, pottery, factory, water craft, school house, church or meeting house, barn or stable, warehouse, malt house, still house, railroad car factory, station house, or railroad car, with intent to kill, rob, commit a rape, or with intent to steal property of any value, or commit any felony; every person so offending shall be deemed guilty of burglary, and shall be imprisoned in the penitentiary, not more than ten nor less than one year.

SEC. 49. [**Feloniously entering certain buildings.**—If any person shall wilfully and maliciously, either in the day time or night season, enter any dwelling house, kitchen, shop, store, warehouse, malt house, still house, mill, factory, pottery, water craft, school house, church or meeting house, smoke house, barn or stable, and shall attempt to kill, disfigure or maim any person, rob, stab, commit a rape or arson; every person so offending shall be imprisoned in the penitentiary not more than ten years nor less than one year.

SEC. 50. [**Possession of burglars' implements.**—If any person shall be found having upon him or her any picklock, crow, key, bit, or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, warehouse, shop, or other building, containing valuable property, he or she shall be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years.

SEC. 51. [**Breaking and entering a dwelling at night and attempting personal violence.**—If any person shall in the night season, unlawfully break open and enter any mansion house, shop, store, ship, boat or other water craft, in which any person shall reside or dwell, and shall commit, or attempt to commit, any personal violence or abuse, or shall be so armed with any dangerous weapon, as to indicate a violent intention; the person so offending shall be fined in any sum not exceeding three hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county not exceeding thirty days, at the discretion of the court.

SEC. 52. [**Same offense in day time.**—If any person, shall, in the day time, unlawfully break open and enter any mansion house, shop, store, ship, boat, or other water craft, in which any person shall, or may dwell or reside, and shall commit, or attempt to commit, any personal abuse, force or violence; he or she so offending shall be fined in any sum not exceeding one hundred dollars, and be imprisoned in the jail of the county not exceeding twenty days, at the discretion of the court.

SEC. 53. [**Breaking and entering buildings in day time with intent to steal.**—If any person shall wilfully and maliciously, in the day time, break and enter any dwelling house, kitchen, shop, store, warehouse, malthouse, still house, mill, factory, pottery, water craft, school house, church or meeting house, smoke house, barn, stable, railroad depot, car factory, station house, or railroad car, with intent to steal; every person so offending, shall be fined in any sum not exceeding three hundred dollars, and be imprisoned in the county jail not exceeding sixty days, at the discretion of the court.

## CHAPTER IX.—BURNING BUILDINGS AND OTHER PROPERTY.

SEC. 54. [**Arson.**—If any person shall wilfully and maliciously burn, or cause to be burned, any dwelling house, kitchen, smoke-house, shop, barn, stable, store-house, warehouse, malt-house, still-house, mill, or pottery, the property of any other person; or, any buildings, the property of any other person, of the value of fifty dollars, or containing property of the value of fifty dollars; or, any church, meeting-house, court-house, work-house, school-house, jail, or other public building; or, any ship, boat, or other water-craft, of the value of fifty dollars; or, any bridge of the value of fifty dollars, erected across any of the waters

within this state; every person so offending shall be deemed guilty of arson, and shall be imprisoned in the penitentiary not more than twenty years, nor less than one year.

**SEC. 55. [Attempting to commit arson.]**—If any person shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same; every person so offending shall be imprisoned in the penitentiary, and kept at hard labor, not more than seven years nor less than one year.

**SEC. 56. [Burning of insured property by owner with intent, etc.]**—Every person who shall wilfully and maliciously burn or cause to be burned any dwelling-house, kitchen, smoke-house, shop, office, barn, stable, store-house, warehouse, still-house, mill, pottery, or any other building of the value of fifty dollars; or, any ship, boat, or other water-craft, of the value of fifty dollars; or, any goods, wares, merchandise, or other chattels, of the value of fifty dollars, which shall be at the same time the property of such person, and insured against loss or damage by fire, with intent to prejudice such insurer; every person so offending shall be deemed guilty of arson, and shall be imprisoned in the penitentiary not more than twenty years nor less than one year.

**SEC. 57. [Same.]**—If any person shall wilfully and maliciously set fire to any of the buildings, water-craft, or other property described in the foregoing section, and which shall be at the same time the property of such person, and insured against loss or damage by fire, with intent to burn or destroy the same, and with intent to prejudice such insurer; every person so offending shall be imprisoned in the penitentiary not more than seven years nor less than one year.

**SEC. 58. [Attempting to ignite buildings.]**—If any person shall wilfully, maliciously, and unlawfully attempt to burn, or cause to be burned, any dwelling-house, kitchen, smoke-house, shop, barn, stable, store-house, warehouse, malt-house, still-house, mill, or pottery, the property of any other person, of the value of fifty dollars; or, any church, meeting-house, court-house, work-house, school-house, jail, or other public building; or, any ship, boat, or other water-craft, of the value of fifty dollars; or, any bridge of the value of fifty dollars, erected across any of the waters within this state; or, if any person shall wilfully, maliciously, or unlawfully attempt to set fire to any of the buildings or other property described herein, with intent to burn or destroy the same, by igniting or trying to set fire to or ignite the same, or any material or thing therein, or any combustible material or thing without the same and nearly adjoining thereto, though the same, or part thereof, be not fired or burned; every person so offending shall be fined in any sum not exceeding three hundred dollars, or imprisonment in the county jail for a term not exceeding four months, or both, at the discretion of the court.

**SEC. 59. [Firing penitentiary.]**—any person who shall wilfully, maliciously, and unlawfully attempt to ignite, set fire to, or burn the Nebraska penitentiary, or any shop, store house, or building within the enclosed walls of the said penitentiary, by the means and in the manner described in the next preceding section, shall be imprisoned in the penitentiary not more than three years nor less than one year.

**SEC. 60. [Burning hay, grain, etc., of thirty-five dollars value.]**—If any person shall wilfully or maliciously set fire to, or burn, or cause to be burned, any barrack or stack of hay, wheat, rye, oats, barley, flax, hemp, or fodder, or grain of any kind; or, any corn-crib, or place wherein corn may be deposited; or, any fence, boards, plank, scantling, rails, tan-bark, or timber, the property of another, and of the value of thirty-five dollars or upwards; every person so offending shall be imprisoned in the penitentiary not more than three years nor less than one year.

**SEC. 61. [Same—Less than thirty-five dollars value.]**—If any person shall wilfully or maliciously commit any of the offenses enumerated in the next preceding section, but the injury or damage therefrom shall be of a less value

than thirty-five dollars; every person so offending shall be fined in any sum not exceeding one hundred dollars, nor less than five dollars, or be imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court.

**SEC. 62. [Setting fire to woods and prairies.]**—If any person or persons shall wilfully and intentionally, or negligently and carelessly, set on fire, or cause to be set on fire, any woods, prairies, or other grounds whatsoever, in any part of this state, it shall be deemed a misdemeanor, and every person so offending shall be punished by a fine of not less than five (5) dollars nor more than one hundred (100) dollars, and by imprisonment in the county jail for not less than one month nor more than six months; *Provided*, That this section shall not extend to any person who shall set on fire, or cause to be set on fire, any woods or prairies adjoining his or her own farm, plantation, field or enclosure, for the necessary preservation thereof from accident by fire between the first day of March and the last day of November, by giving to his or her neighbors two days notice of such intention; *Provided, also*, That this section shall not be construed to take away any civil remedy which any person may be entitled to, for any injury which may be done or received in consequence thereof. [Amended 1877, 8.]

#### CHAPTER X.—OFFENSES RELATING TO DOMESTIC ANIMALS.

**SEC. 63. [Altering ear mark or brand.]**—If any person shall wilfully and maliciously alter or deface any artificial ear mark or brand, upon any horse, mare, foal, filly, mule, or ass, sheep, goat, or swine, cow, ox, steer, bull, or heifer, the property of another; every person so offending, shall be fined in any sum not exceeding fifty dollars, and be liable in treble damages to the party injured.

**SEC. 64. [Killing or injuring animals to the amount of thirty-five dollars.]**—If any person or persons shall wilfully or maliciously kill or destroy any horse, mare, foal, filly, mule, ass, sheep, goat, cow, ox, steer, bull, heifer, or swine, the property of another or others, of the value of thirty-five dollars or upwards, or shall wilfully and maliciously injure any such animal or animals, the property of another or others, to the amount of thirty-five dollars, or upwards, the person or persons so offending, shall be imprisoned in the penitentiary not more than three years, nor less than one year.

**SEC. 65. [Same—Less than thirty-five dollars.]**—If any person or persons shall unlawfully and maliciously kill or destroy any horse, mare, foal, filly, mule, or ass, sheep, goat, cow, ox, steer, bull, heifer, or swine, the property of another or others, of less value than thirty-five dollars, or shall wilfully and maliciously injure any such animal or animals, the property of another or others, to an amount less than thirty-five dollars; such person or persons shall be fined in any sum not more than one hundred dollars, nor less than five dollars, or imprisonment in the jail of the county not exceeding three months, or both fined and imprisoned as aforesaid, at the discretion of the court. [Amended 1875, 4.]

**SEC. 66. [Poisoning animals.]**—If any person or persons shall wilfully and maliciously administer, or cause to be administered, poison of any sort whatever, to any horse, mare, foal, filly, jack, mule, ass, sheep, goat, cow, ox, steer, bull, heifer, or swine, the property of another, with intent to injure or destroy such horse, mare, foal, filly, jack, mule, or ass, sheep, goat, cow, ox, steer, bull, heifer, or swine; the person or persons so offending shall be fined in the sum of one hundred dollars, or imprisoned in the jail of the proper county, not exceeding thirty days, at the discretion of the court.

**SEC. 67. [Cruelty to animals.]**—If any person shall overdrive, overload, torture, torment, deprive of necessary sustenance, or unnecessarily or cruelly beat, or needlessly mutilate or kill, or cause or procure to be overdriven, overloaded, tortured, tormented, or deprived of necessary sustenance, or to be unnecessarily or cruelly beaten, or needlessly mutilated or killed, as aforesaid, any domestic animal; every such offender shall, for every such offense, be deemed guilty of a misdemeanor.

**SEC. 68. [Impounded animals to be supplied with food and water.]**—Any person who shall impound, or cause to be impounded, in any pound or yard, for sale or slaughter, or for any other purpose, any domestic animal, shall supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof shall, upon conviction, be adjudged guilty of a misdemeanor, and in case any domestic animal shall be at any time impounded or yarded, as aforesaid, and shall continue to be without necessary food and water for more than twenty-four successive hours, it shall be lawful for any person from time to time, and as often as it shall be necessary, to enter into and upon any pound or yard in which any such domestic animal shall be so confined, and to supply it with necessary food and water so long as it shall remain so confined. Such person shall not be liable to any action for such entry, and the reasonable cost for such food and water may be collected by him of the owner of such domestic animal, and the said domestic animal shall not be exempt from levy and sale upon the execution issued upon a judgment therefor.

**SEC. 69. [Cruel transportation of animals.]**—If any person shall carry, or cause to be carried, in or upon any vehicle or otherwise, any domestic animal in a cruel or inhuman manner, he shall be deemed guilty of a misdemeanor, and whenever he shall be taken into custody therefor by any officer, such officer may take charge of such vehicle and its contents, and deposit the same in some safe place of custody; and any necessary expenses which may be incurred for taking charge of and keeping and sustaining the same, shall be a lien thereon, to be paid before the same can be lawfully recovered, and if the said expenses, or any part thereof, remain unpaid, they may be recovered by the person incurring the same, of the owner of said domestic animal in any action therefor; and it shall be unlawful for any person or corporation engaged in transporting live stock on railway trains, to detain such stock in cars for a longer continuous period than twenty-four hours without supplying the same with food and water.

**SEC. 70. [Abandonment of sick or disabled animals.]**—If any maimed, sick, infirm or disabled domestic animal, shall be abandoned to die by any person in any public place, such person shall be deemed guilty of a misdemeanor, and it shall be lawful for any magistrate or chief of police in this state, to appoint suitable persons to destroy such domestic animal, if unfit for further use.

**SEC. 71. [Same—Penalty.]**—Any person convicted of a violation of any of the provisions of the last four preceding sections, shall pay, for every offense, a fine not less than five nor more than fifty dollars.

**SEC. 72. [Bull baiting—Torture of animals.]**—Any person or persons who shall confine, or aid or assist in confining, any bull, steer or other domestic or domesticated animal or animals, either by tying, penning or inclosing the same, for the purpose of bull baiting, bear baiting or other purpose of torture, or shall aid or assist in torturing the same, when so tied or penned, either by dogs, whips, spears or other instruments, shall pay a fine not exceeding one hundred dollars.

**SEC. 73. [Cock fighting.]**—If any person or persons shall publicly exhibit, or aid and assist in exhibiting the game commonly called cock fighting, such person or persons shall forfeit and pay a fine not exceeding twenty dollars.

**SEC. 74. [Horse racing.]**—If any two or more persons shall run a match, horse race or races in any public road in common use, for the purpose of trying the speed of their horses, every person so offending shall be fined in any sum not exceeding five dollars nor less than one dollar.

**SEC. 75. [Spreading disease among sheep.]**—Any person being the owner of sheep, or having the same in charge, who shall turn out, or suffer any sheep having any contagious disease, knowing the same to be so diseased, to run at large upon any common, highway or enclosed ground, or who shall sell any such sheep, knowing the same to be diseased, without fully disclosing the fact to the purchaser, shall be punished by a fine of not less than twenty dollars and not more than one hundred dollars, and be imprisoned in the jail of the county not

exceeding three months; *Provided*, This section shall not be so construed as to prevent any person owning such diseased sheep from driving along any public highway. [Amended 1875, 5].

**SEC. 76. [Selling or allowing to run at large diseased animals].**—It shall be unlawful for any person to sell, barter or dispose of, or permit to run at large any horses, cattle, sheep or domestic animal, knowing that such horse, cattle, sheep or domestic animals are infected with contagious or infectious disease, or have been recently exposed thereto, unless he shall first duly inform the person to whom he may sell, barter or dispose of such horse, cattle, sheep, or other domestic animal, of the same; and any person so offending shall be fined in any sum not less than twenty dollars nor more than one hundred dollars, or be confined in the jail of the county not exceeding three months. [Id.]

**SEC. 77. [Allowing diseased animals to come in contact with others].**—If any person, being the owner, or having charge of any horses, cattle, sheep or any kind of stock, knowing the same to be infected with contagious or infectious disease, shall knowingly permit it to come in contact with any other person's horses or stock, without such person's knowledge or permission, such person shall be fined in any sum not less than fifty nor more than five hundred dollars, or be confined in the jail of the county not less than ten nor more than fifty days.

**SEC. 78. [Taking and using animals without leave].**—If any person shall unlawfully take any horse, mare, gelding, foal or filly, ass or mule, from the stable, lot or pasture of another, or from a hitching rack, or any other place as aforesaid, have [having] been lawfully placed, without consent of the owner, with intent to injure, set at large or wrongfully use the animal so taken, such person shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding three months, or both, and shall also be liable to the party injured in double the amount of damages sustained. [Amended 1875, 5.]

**SEC. 79. [Repealed. Laws 1879, page 70.]**

**SEC. 80. [Disturbing impounded cattle].**—It is hereby declared unlawful for any person or persons to interfere with, or set at liberty any domestic animal or animals impounded in a lawful manner by any other person; and every person so offending shall, upon conviction thereof, pay a fine not exceeding one hundred dollars nor less than five dollars.

**SEC. 81. [Stealing or interfering with bees or honey].**—If any person shall steal any hive, box, bee palace or other contrivance containing honey or honey bees, the property of another, of less value than thirty-five dollars; or if any person shall steal honey from any such hive, box, bee palace or other contrivance, as aforesaid; or if any person shall wilfully and maliciously disturb, injure or destroy any such hive, box, bee palace or other contrivance containing honey or honey bees; or if any person shall steal, or by any art, device or contrivance, or in any manner whatever, decoy from any such hive, box, bee palace or contrivance, any such honey bees, with intent to convert the same to his own use, or with intent to damage or defraud the owner thereof; or if any person shall by any art, contrivance or device, unlawfully and maliciously injure, damage or destroy any such honey bees, by means of poison or otherwise, every person so offending shall be fined in any sum not exceeding one hundred dollars, and shall be confined in the jail of the county not less than ten nor more than thirty days, and shall, moreover, be liable to the party injured in double the value of the property stolen, injured or destroyed.

**SEC. 82. [Entering premises of another with intent to disturb bees or honey].**—Any person or persons who unlawfully enters the premises of another, for the purpose of disturbing or carrying away any box, gum or vessel containing bees or honey, shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the jail of the county not exceeding sixty days, or both, and shall make restitution to the party injured in double the amount of damages sustained.



## CHAPTER XI.—OFFENSES RELATING TO GAME AND FISH.

**SEC. 83. [Killing certain birds.]**—It shall be unlawful for any person in the state of Nebraska to knowingly and intentionally kill, injure or harm, except upon the lands owned by such person, any robin, lark, thrush, blue bird, king bird, sparrow, wren, jay, swallow, turtle dove, oriole, wood pecker, yellow hammer, cuckoo, yellow bird, bobolink, or other bird or birds of like nature, that promote agriculture and horticulture by feeding on noxious worms and insects, or that are attractive in appearance or cheerful in song. Any person violating any of the provisions of this section, shall be fined not less than three nor more than ten dollars for each bird killed, injured or harmed.

**SEC. 84. [Killing, etc., muskrats, mink or otter, on lands of another.]**—It shall be unlawful for any person, between the fifteenth day of April and the fifteenth day of February following, to trap, catch, kill, or to pursue with such intent, on the premises of another, any muskrat, mink or otter; and it shall be unlawful for any person, at any time, to enter upon the premises of another, without his consent, with a view of trapping, hunting, killing, or pursuing with intent to kill, any such animal or animals; and it shall furthermore be unlawful for any person to enter upon the premises of another, without his consent, and destroy, tear down or in any manner injure the muskrat heaps or houses on such premises; any person offending against any of the provisions of this section shall be fined in any sum not exceeding twenty dollars for each offense; *Provided*, This section shall not be so construed as to prevent the catching and killing of any animals specified, where there is danger of their doing injury to property, either public or private.

**SEC. 85. [Certain means of killing forbidden—Eggs protected, etc.]**—It shall also be unlawful for any person, at any time, by the aid or use of any swivel, punt gun, big gun (so called), or any gun other than the common shoulder gun; or by the aid or use of any punt boat, or sneak boat used for carrying such gun, to catch, kill, wound or destroy, or to pursue after with intent to catch, kill, wound or destroy, upon any of the waters, bays, rivers, marshes, mud flats, or any cover to which wild fowl resort within the state of Nebraska, any wild goose, wood duck, teal, canvasback, bluebill, or other wild duck, or to destroy or disturb the eggs of any of the birds above named; and any person offending against any of the provisions of this act, shall be fined in any sum not less than two dollars nor more than twenty dollars for each offense, or be imprisoned in the county jail not more than twenty days, or both.

**SEC. 86. [Killing game at certain seasons—Transportation and disposition.]**—It shall be unlawful for any person to kill, ensnare, or trap any wild buffalo, elk, mountain sheep, deer, or antelope (except for the purpose of domestication,) between the first day of January and the first day of October in each year, or to kill, ensnare, or trap any wild grouse between the first day of February and the fifteenth day of August in each year, or to kill, ensnare, trap, or net quail or wild turkey, between the first day of December in each year and the first day of October in the following year, or to ensnare, trap, or net the same at any time of the year, or to buy, sell, ship, transport, or carry, or have in possession any such animal or bird, between the dates within which the killing, ensnaring, trapping or netting of such animals or birds is prohibited by law. It shall also be unlawful for any person, agent or employee of any association, corporation, railroad company, or express company, to receive, carry, transport, or ship any such animal or bird at any time of the year. It shall be unlawful for any person to go upon the premises of another person or corporation for the purpose of hunting, trapping, netting, ensnaring, or killing any animal or bird at any season of the year, unless by the consent of the owner or owners of said premises. It is further enacted, that any person, agent, or employee, as aforesaid, who shall violate any provision of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof,

shall pay a fine of fifteen dollars for each buffalo, elk, mountain sheep, deer, antelope, or wild turkey so as aforesaid killed, ensnared, trapped, netted, bought or sold, shipped, transported, or held in possession in violation of this section, and the sum of five dollars for each grouse or quail, so as aforesaid killed, trapped, ensnared, netted, bought, sold, shipped, transported, or held in possession in violation of the provisions of this section. Having in possession any of the named animals or birds between said dates, shall be deemed and taken as presumptive evidence that the same were killed, ensnared, netted or trapped in violation of this section, and the civil authorities of any city, town, or precinct where any animal or bird shall have been killed, or held in possession in violation of law be found, are hereby authorized to cause the same to be seized with or without warrant, and to be distributed among the poor persons of such city, town or precinct; and any person who shall go upon the land of another, in violation of this section, shall, upon conviction thereof, pay for such offense in any sum not less than five dollars, nor more than fifty dollars, and shall be liable to the owner of the premises in an action for trespass. [1875, 18. Amended 1879, 75.]

**SEC. 87. [Interfering with private fish pond.]**—That it shall be unlawful for any person to catch, interfere with, injure, or in any manner destroy, or maliciously disturb, to the damage of the private property of another, the fish in, or work connected with any private fish-pond, not exceeding ten acres, in this state. Any person or persons violating the provisions of this section shall be fined in any sum not less than ten dollars nor more than one hundred dollars; and it shall be lawful for any person to take up, remove, or clear away away any fish-net, fish-lines, or fish-pound placed or put in the waters of any lake, pond, or reservoir contrary to the provision of this act. [Amended 1875, 6.]

**SEC. 87 a. [Catching fish in certain cases.]**—**SEC. 1.** It shall be unlawful for any person or persons to catch, kill, injure, or destroy any fish in any river, creek, brook, stream, lake, pond, bayou, or other body of water in this state with a seine, trammel net, gill net, pound net, basket, or weir, or in any other manner, whatever, except with a hook and line, spear and fork. It shall be unlawful for any person to set, place, deposit, or drag a seine, or net of any description, or basket, or weir, in any of the above named waters in this state, and every seine, net, basket, or weir, found in any waters of this state, the same may be taken up by any one; *Provided*, This act shall not be construed to prohibit the owners of private ponds or streams from taking fish therein at any time or in any manner. Every person violating any provision of this section shall be deemed guilty of a misdemeanor, and punished by a fine of not less than five dollars for each offense, or be imprisoned in the county jail not less than ten days or both fined and imprisoned in the discretion of the court. [1879, 71.]

**SEC. 87 b. [Injury to fish hatchery or pond.]**—**SEC. 2.** It shall be unlawful for any person or persons to injure, disturb, or destroy, any hatching-box, hatching-house, or pond, used for hatching or propagating fish, or to injure, or destroy, or disturb, any spawn, or fry, or fish, in any hatching-box, hatching-house, or pond, or stream; *Provided*, That the fish commissioners of this state may take or cause to be taken any of the fish named in this section for the purposes of propagation, or stocking the waters of this state. Every person violating any provision of this section shall be deemed guilty of a misdemeanor, and punished by a fine of not more than ten dollars for each fish taken, or held in possession, or other offense under this section, or by imprisonment in the county jail not more than ten days, or both fined and imprisoned in the discretion of the court.

**SEC. 87 c. [Certain fish not to be caught or injured—Having possession of fish.]**—**SEC. 8.** It shall be unlawful for any person or persons to catch, injure, kill, or destroy any California salmon, land-locked salmon, trout, shad, white fish, or carp, which shall have been planted or placed in any waters

SEC. 87 a, b, c. "An act to prohibit the catching of game fish in certain cases." Approved Feb. 2, 1875. Laws p. 23, as amended Feb. 27, 1879.

of this state by the fish commissioners, or by private persons. Every person violating any provision of this section shall be deemed guilty of a misdemeanor and punished by a fine of not less than ten dollars for each fish so taken, injured, killed, or destroyed, or had in possession, or imprisoned in the county jail not less than ten days, or both fined and imprisoned in the discretion of the court. The having in possession of any fish named in this section, shall be presumptive evidence that the same were taken in violation of law. [1879 § 3, 72.]

#### CHAPTER XII.—INJURIES TO TREES, FRUITS AND VEGETABLES.

**SEC. 88. [Trees to the amount of thirty-five dollars.]**—If any person or persons shall wilfully and maliciously, and without lawful authority, box, bore, bark, girdle, saw, cut down, injure or destroy, to the amount in value of thirty-five dollars or upwards, any fruit, ornamental, shade, or other tree or trees, standing or growing in any orchard, nursery, or grove, the property of another, every such person or persons shall be imprisoned in the penitentiary and kept at hard labor not more than ten years, nor less than one year, and shall, moreover, be liable to the party injured, in double the amount of damages by him sustained.

**SEC. 89. [Same—Less in value than thirty-five dollars.]**—If any person shall wrongfully, and without any lawful authority, cut down, fell, box, bore, or otherwise injure or destroy any living tree or trees, standing or growing on any land owned by, or belonging to any other person or persons, body-politic or corporate, in any case other than in the preceding section mentioned, every such person so offending shall be fined in any sum not exceeding one hundred dollars nor less than five dollars; and shall, moreover, be liable to the action of the party injured, in double damages. [Amended 1875, 6.]

**SEC. 90. [Ornamental trees on commons, streets, etc.]**—If any person shall wantonly, wilfully, or maliciously, cut down, injure, or destroy any living ornamental tree or trees, either planted or preserved as such, standing or growing on any common or public ground, or any street, alley, side-walk, avenue, or promenade, every person so offending, shall, on conviction thereof, be fined in any sum not more than one hundred dollars nor less than five dollars; and shall, moreover, be liable to the action of the party injured, in double the damage sustained. [Id.]

**SEC. 91. [Cultivated or ornamental trees, plants, bushes and vines.]**—If any person or persons shall wilfully and maliciously, and without lawful authority, cut down, root up, sever, carry away, injure, or destroy, any fruit or ornamental tree, shrub, bush, or vine, or any cultivated root, plant, or fruit, or other vegetable production, standing, growing, or being on or attached to the lands of another, or shall wilfully and without lawful authority, cut down, root up, carry away, destroy, or injure any fruit, shade, or ornamental tree, vine, or shrub, planted or growing on any street, lane, or alley, state, or county, or other public road, or on any public grounds in any city, borough, incorporated village, or town, or in any cemetery, or upon any burying ground, within this state, every such person or persons shall be fined in any sum not exceeding one hundred dollars, nor less than five dollars, and be liable to the party injured in double the amount of damages sustained. [Amended 1875, 7.]

**SEC. 92. [Charge for stealing trees, fruits, and vegetables.]**—Where there is a charge or indictment for stealing trees, fruits, or vegetables, the same may be sustained, though it should appear from the evidence that the trees, fruits, or vegetables were at the time of taking the same attached to the freehold property.

#### CHAPTER XIII.—INJURIES TO RAILROAD AND TELEGRAPH PROPERTY.

**SEC. 93. [Railroad in operation.]**—Every person who shall wilfully and maliciously remove, break, displace, throw down, destroy, or in any manner injure any iron, wooden, or other rail, or any branches, or branchways, or any part of

the tracks, or any bridge, viaduct, culvert, trestle-work, embankment, parapet, or other fixture, or any part thereof, attached to or connected with, such tracks of any railroad in this state, now in operation, or which shall hereafter be put in operation, or who shall wilfully and maliciously place any obstructions upon the rail or rails, track or tracks of any such railroad, shall be punished by imprisonment in the penitentiary, not less than one year nor more than twenty years; *Provided, however,* That if any person shall, by the commission of either of the aforesaid offenses, occasion death of any person or persons, the person or persons so offending shall be deemed guilty of murder in the first or second degree, or manslaughter, according to the nature of the offense, and, on conviction thereof, shall be punished as in other cases.

**SEC. 94. [Driving vehicle on railroad track.]**—Every person who shall draw or drive any wagon, carriage, cart, coach, gig, or other two or four-wheeled vehicle, on or between the rails or tracks, or on or along the graded roadway of such road (unless compelled by necessity so to do), without the knowledge and consent of the company owning or controlling said road, shall be fined in any sum not exceeding twenty-five dollars nor less than five dollars.

**SEC. 95. [Fixtures of railroad not in operation to the amount of thirty-five dollars.]**—Every person who shall wilfully and maliciously throw down, break, remove, displace, cut, split, burn, or in any other manner destroy or injure any of the rails, sills, cross-ties, piles, bridges, culverts, viaducts, parapets, or any other fixture, to the value of thirty-five dollars or upward, or shall wilfully and maliciously injure or destroy any embankment of any railroad within this state, now constructed, or in process of construction, or any railroad which shall hereafter be constructed, or in the process of construction, to the value of thirty-five dollars or upward, shall be punished by imprisonment in the penitentiary, not exceeding three years, nor less than one year.

**SEC. 96. [Equipments, buildings, etc., of railroad to the amount of thirty-five dollars.]**—Every person who shall wilfully and maliciously cut, break, burn, injure or destroy any locomotive, car, or other machinery, now, or which may hereafter be in use upon any railroad within this state, or any wood-house, car-house, or water-station erected for the accommodation and use of any railroad within this state, to the value of thirty-five dollars or upward, shall be punished by imprisonment in the penitentiary, not exceeding three years nor less than one year.

**SEC. 97. [Same—Less than thirty-five dollars.]**—Every person who shall wilfully or maliciously commit any of the acts or offenses enumerated in the last two preceding sections, but the injury or damage therefrom shall be of a less value than thirty-five dollars, every person so offending shall be fined in any sum not exceeding one hundred dollars nor less than five dollars, or be imprisoned in the county jail, not exceeding thirty days, or both, at the discretion of the court.

**SEC. 98. [Telegraph wires or fixtures.]**—Every person who shall wilfully and maliciously injure, molest, or destroy any of the lines, wires, posts, piers, or abutments, of any telegraph company, owner, or association, or any other materials or property of such company, owner, or association, used in or about the transmission of dispatches or other communications, shall be punished by imprisonment in the penitentiary, not less than one year nor more than three years, in case the damage to such company, owner, or association, from such injury, be thirty-five dollars, or upward; but if such damage be less than thirty-five dollars, then the person so offending shall pay a fine of not less than ten dollars nor more than five hundred dollars.

#### CHAPTER XIV.—INJURIES TO PROPERTY GENERALLY.

**SEC. 99. [Bridges—Landmarks.]**—If any person shall, knowingly, wilfully, and maliciously demolish, cut down, or destroy, any private, public, or toll bridge, cut, fell, deface, alter, or remove any landmark, corner, or bearing tree,

properly established; the person so offending shall be fined in any sum not exceeding five hundred dollars, or imprisonment in the jail of the county, not exceeding thirty days, or both, at the discretion of the court.

SEC. 100. [**Mile stones—Guide boards.**—] If any person shall wilfully and maliciously demolish, throw down, alter, or deface any mile stone, mile board or guide board, on, or at the fork of any public road; every person so offending shall be fined in any sum not exceeding fifty dollars, or be imprisoned in the jail of the county, not exceeding ten days, or both, at the discretion of the court.

SEC. 101. [**Tombstones.**—] If any person shall wilfully or maliciously alter, deface, break down, or destroy any monument or tombstone, erected or set up to perpetuate the memory of any deceased person; every person so offending shall be fined in any sum not exceeding two hundred dollars, and be imprisoned in the county jail, not exceeding thirty days, at the discretion of the court.

SEC. 102. [**Cemetery property.**—] Any person who shall wilfully destroy, mutilate, deface, injure or remove any tomb, monument, or grave stone or other structure placed in any cemetery, or any fence, railing, or other work for the protection or ornament of a cemetery, or tomb, monument, or grave stone, or other structure aforesaid, or of any cemetery lot within a cemetery, shall be punished by a fine of not less than five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term of not less than one nor more than thirty days; and such offender shall also be liable in an action of trespass, in the name of the association or other owner of such cemetery, to pay all such damages as have been occasioned by his unlawful act or acts.

SEC. 103. [**Fences, gates, etc.**—] If any person or persons shall wantonly or maliciously throw, put, or lay down, prostrate, deface or injure any fence inclosing an orchard, pasture, meadow, garden, yard, or other field, or inclosure, the property of, or lawfully occupied by any other person or persons, or corporation, or shall wantonly or maliciously open, let down, throw down, prostrate, injure, or deface any gate or bars belonging to any such inclosure; every such person or persons shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the jail of the county, not exceeding thirty days, or both, at the discretion of the court.

SEC. 104. [**Defacing legal public notices.**—] If any person shall intentionally deface, obliterate, tear down, or destroy, in whole or in part, any copy or transcript of, or extract from any law of the United States or of this state, or any proclamation, publication, advertisement, or notification, whatsoever, set up in any public place, within this state, for the public information of any citizen, by the authority of any law or act of this state, such person shall be fined in any sum not exceeding ten dollars, and may be committed to jail for a time not exceeding twenty-four hours.

SEC. 105. [**Turnpike bridges.**—] No person shall carry fire across any wooden bridge, on any lawful public road in this state, unless in a lantern or close vessel; and no person shall ride or drive any horse or horses, stage coach, or other vehicle, over any such bridge faster than a walk; and any person who shall be convicted of a violation of either of the provisions of this section, shall pay a fine of five dollars.

SEC. 106. [**Turnpike fixtures.**—] Any person who shall wilfully and maliciously injure any lawful public road in this state, or any bridge, gate, or mile stone, or other fixture, on any such road, shall, for every such offense, pay a fine not exceeding fifty dollars nor less than ten dollars; and, moreover, be liable to any party injured in double damages.

SEC. 107. [**Depositing materials on turnpike road.**—] Any person who shall deposit any wood, stone, or other kind of materials, on any part of any lawful public road, in this state, inside of the ditches of such road, or outside of the ditches, but so near thereto as to cause the banks thereof to break into the same, or cause the accumulation of rubbish, or any kind of obstruction, shall, for every such offense, pay a fine of five dollars.

**SEC. 108. [Injuring property to the amount of one hundred dollars.]**—That if any person shall wilfully and maliciously destroy or injure to the amount of one hundred dollars, any personal property of any description whatsoever, or any building or other structure upon land of any kind whatsoever, owned by any other person or persons, corporation or association of persons, every person so offending shall be punished by imprisonment in the penitentiary not less than one year, nor more than three years; and, moreover, be liable to the party injured in double the amount of damages sustained thereby.

**SEC. 109. [Same—Less than one hundred dollars.]**—If any person shall wilfully and maliciously injure or destroy to any amount less than one hundred dollars, any personal property of any description whatsoever, or any building or other structure of any kind, owned by another person, every person so offending, shall be imprisoned in the jail of the proper county not exceeding thirty days, and shall, moreover, be fined in double the amount of the damage of the property injured or destroyed.

**SEC. 110. [Salt well, furnace, or engine.]**—If any person shall wilfully and maliciously destroy or injure to the amount of thirty-five dollars and upwards, any salt well, salt furnace or engine connected therewith, such person shall be confined in the penitentiary for any term not less than one, nor more than three years, and shall, moreover, be liable to the party injured in double the amount of damages sustained thereby.

**SEC. 111. [Buildings and appurtenances.]**—If any person shall wilfully and maliciously injure or deface any church edifice, school-house, dwelling-house, or other building, its fixtures, books, or appurtenances, or shall commit any nuisance therein, or shall purposely and maliciously commit any trespass upon the inclosed grounds attached thereto, or any fixtures placed thereon, or any inclosure or sidewalk about the same, such person shall be fined in any sum not exceeding one hundred dollars.

**SEC. 112. [Interfering with water crafts.]**—If any person shall unlawfully and maliciously or wantonly loose, take, sink, injure, or deface, or in any other manner render the same unfit for use by the owner, any boat or other craft used or kept by any person or persons within the state of Nebraska, to be used on any river, or other water course, or on any lake or pond within this state, such person shall be fined in any sum not less than five dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding forty days, or both, at the discretion of the court, and shall, moreover, be liable to the party injured in double the amount of the damages.

**SEC. 113. [Periodicals in libraries or reading-rooms.]**—If any person shall intentionally deface, obliterate, tear, or destroy in whole or in part, any newspaper, magazine, or periodical on file in any reading room belonging to the state, or any library or other association in this state, or shall cut therefrom any article or advertisement, such person shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars, nor less than ten dollars, or be imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court.

## CHAPTER XV.—STEALING, ABETTING THE SAME, AND DESTROYING WRITTEN INSTRUMENTS.

**SEC. 114. [Stealing money or property, of the value of thirty-five dollars.]**—If any person shall steal any money, or goods and chattels of any kind whatever, whether the same be wholly money, or wholly in other property, or, partly in money and partly in other property, the property of another, of the value of thirty-five dollars or upward; or shall steal, or maliciously destroy

CHAP. XV. The bringing into this state, by the thief, of goods stolen in another state is not larceny. 1 Neb. 11. Larceny defined. 4 Neb. 528. Possession of property, effect of. Id. 529. Possession of part presumptive evidence of stealing the whole. 6 Neb. 107. Mere conversion of property is not larceny. 5 Neb. 548. A verdict, fixing value of property stolen at \$35, in a police court upon a charge of petit larceny, is no bar to an indictment in the district court for stealing the same property. 6 Neb. 106.

any money, promissory note, bill of exchange, order, draft, receipt, warrant, check, or bond, given for the payment of money, or receipt acknowledging the receipt of money, or other property, of the value of thirty-five dollars or upwards, every such person shall be imprisoned in the penitentiary not more than seven years nor less than one year; *Provided*, The word "money," in this section, shall be deemed and taken as including bank bills or notes, United States treasury notes, or other bills, bonds, or notes issued by lawful authority, and intended to pass and circulate as money.

**SEC. 115. [Receiving or buying stolen bank bills, bonds, receipts, etc.]**—If any person shall receive or buy any bank bill or bills, or promissory note or notes, bill of exchange, order, receipt, draft, warrant, check, or bond, given for the payment of money, of thirty-five dollars or upwards, which have been stolen, knowing the same to be stolen, with intent to defraud the owner thereof, every person so offending shall be imprisoned in the penitentiary not more than seven years, nor less than one year.

**SEC. 116. [Receiving stolen goods—Concealing thief.]**—If any person shall receive or buy any goods or chattels of the value [of] thirty-five dollars or upwards, that shall be stolen or taken by robbers with intent to defraud the owner, or shall harbor or conceal any robber or thief guilty of felony, knowing him or her to be such, every person so offending shall be imprisoned in the penitentiary no more than seven years, nor less than one year. [Amended 1875, 7.]

**SEC. 117. [Horse stealing—Receiving or buying stolen horses—Concealing such horse thief.]**—If any person shall steal any horse, mare, gelding, foal, or filly, ass, or mule, of any value; or, if any person shall receive or buy any horse, mare, gelding, foal or filly, ass, or mule, that shall have been stolen, knowing the same to have been stolen, with intent, by such receiving or buying, to defraud the owner; or, if any person shall conceal any horse thief, knowing him to be such; or, if any person shall conceal any horse, mare, or gelding, foal or filly, ass or mule, knowing the same to have been stolen; every person so offending shall be imprisoned in the penitentiary not more than fifteen nor less than three years.

**SEC. 118. [Wills or testamentary instrument.]**—If any person or persons shall, either during the life of the deviser, testator, or testatrix, or after his or her death, steal, or for any fraudulent purpose, destroy or secrete any will, codicil, or other testamentary instrument, whether the same relate to real or personal estate, or both, or shall procure the same to be done, every such person shall be imprisoned in the penitentiary not less than one year nor more than ten years. It shall not be necessary, in any indictment for the offense herein named, to allege that such will, codicil, or other instrument, is the property of any person, or that the same is of any value.

**SEC. 119. [Petit larceny—Destruction of bank notes, bonds, etc.]**—If any person shall steal any money or goods and chattels of any kind whatever, of less value than thirty-five dollars, the property of another, or shall steal or maliciously destroy any money, promissory note, bill of exchange, order, draft, receipt, warrant, check, or bond given for the payment of money, or receipt acknowledging the receipt of money or other property of less value than thirty-five dollars, every person so offending shall make restitution to the party injured in two-fold the value of the property stolen or destroyed, and be fined in any sum not exceeding one hundred dollars, or shall be imprisoned in the county jail for any time not exceeding thirty days. The word "money," in the section, shall be held to include bank bills or notes, United States treasury notes, or other bills, bonds, or notes, issued by lawful authority and intended to pass [and] circulate as money. [Amended 1875, 7.]

**SEC. 120. [Concealing stolen property.]**—If any person shall conceal any stolen money, goods, or chattels of any kind whatever, of less value than thirty-five dollars, or shall conceal any bank bill or bills, promissory note or notes, bill of exchange, order, warrant, draft, check, or bond, or any accountable

receipt for money, given for the payment or acknowledgment of any sum under thirty-five dollars, the person so concealing, knowing the same to have been stolen, shall be fined for every such offense in any sum not exceeding one hundred dollars, or shall be imprisoned in the county jail not exceeding thirty days, either or both, at the discretion of the court. [Id.]

**SEC. 121. [Embezzlement.]**—If any clerk, agent, or servant of any private person or any co-partnership, except apprentices and persons within the age of eighteen years, or if any officer, agent, clerk, or servant of any incorporated company, or joint stock company, shall embezzle or convert to his own use, or fraudulently taken or make away with, or secrete with intent to embezzle or fraudulently convert to his use, without the assent of his or her employer or employers, or the owner or owners thereof, any money, goods, rights in action, or other valuable security or effects whatever belonging to any other persons, body-politic, or corporate, which shall come into his or her possession or care by virtue of such employment, or if any officer elected or appointed to any office of public trust in the state shall embezzle or convert to his own use any money, property, rights in action, or other valuable security or effects whatever belonging to any individual, company, or association that shall come into his possession by virtue or under color of his office, every such person so offending shall be punished in the manner provided by law for feloniously stealing property of the value of the article so embezzled, taken or secreted, or of the value of any sum of money payable or due upon any right in action so embezzled. Every embezzlement of any evidence of debt negotiable by delivery only, and actually executed by the master or employer of any such clerk, agent, officer, or servant, but not delivered or issued as a valid instrument, shall be deemed an offense within the meaning of this section. [Amended 1875, 8.]

**SEC. 121 a. [Same.]**—**SEC. 2.** That if any clerk, apprentice or servant, whether bound or hired, to whom any money, bank bill, or note, or goods, or chattels shall be entrusted or delivered by his or her master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank bill or note, or goods, or chattels, or any part thereof, with intent to steal the same and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, shall embezzle the said money, bank bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same; every such person so offending shall be deemed guilty of larceny, and be punished accordingly. [1875 § 2, 26.]

**SEC. 121 b. [Conversion by bailee.]**—**SEC. 3.** That if any bailee of any money, bank bill or note, goods or chattels shall convert the same to his or her own use, with an intent to steal the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly. [Id.]

**SEC. 121 c. [Larceny of bedding, furniture, etc.]**—**SEC. 4.** That if any lodger shall take away, with intent to steal, embezzle or purloin, any bedding, furniture, goods or chattels which he or she is to use in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction, shall be punished accordingly. [Id.]

**SEC. 122. [Buying and receiving embezzled property.]**—Every person who shall buy, or in any way receive any money, goods, rights in action, or any valuable security or effects whatever, knowing the same to have been embezzled, taken or secreted, contrary to the provisions of the last section, shall be punished in the same manner, and to the same extent, as therein prescribed, upon a conviction of a servant for such embezzlement.

**SEC. 123. [Embezzlement by carriers or inn keepers.]**—If any carrier, or other person to whom any goods, money, right in action, or any valuable



personal property or effects shall have been delivered to be transported or carried for hire; or if any person employed in such transportation or carrying, shall, without assent of his employer, take, embezzle or convert to his own use such goods, moneys, rights in action, property or effects, or any part of them, and before delivery of such article at the place or to the person entitled to receive them; or if any innkeeper shall embezzle or convert to his own use, or fraudulently take, make away with or secrete, with intent to embezzle or fraudulently convert to his own use, without the consent of his guest, any money, bank notes, jewelry, articles of gold or silver manufacture, precious stones or bullion, delivered to such inn keeper by his guest for safe custody; every such person shall be punished in the manner prescribed by law for feloniously stealing property of the value of the article or articles so embezzled, taken or secreted.

**SEC. 124. [Embezzlement of public money.]**—If any officer or other person charged with the collection, receipt, safe keeping, transfer or disbursement of the public money, or any part thereof, belonging to the state or to any county, or precinct, organized city or village, or school district in this state, shall convert to his own use, or to the use of any other person or persons, body-corporate, association or party whatever, in any way whatever, or shall use by way of investment in any kind of security, stock, loan, property, land, or merchandise, or in any other manner or form whatever, or shall loan, with or without interest, to any company, corporation, association or individual, any portion of the public money, or any other funds, property, bonds, securities, assets, or effects of any kind, received, controlled, or held by him for safe keeping, transfer, or disbursement, or in any other way or manner, or for any other purpose; or, if any person shall advise, aid, or in any manner participate in such act, every such act shall be deemed and held in law to be an embezzlement of so much of the said moneys or other property, as aforesaid, as shall be thus converted, used, invested, loaned, or paid out as aforesaid; which is hereby declared to be a high crime and such officer or person or persons shall be imprisoned in the penitentiary, not less than one year nor more than twenty-one years, according to the magnitude of the embezzlement, and, also, pay a fine equal to double the amount of money or other property so embezzled as aforesaid, which fine shall operate as a judgment at law on all of the estate of the party so convicted and sentenced, and shall be enforced to collection by execution or other process, for the use only of the party or parties whose money or other funds, property, bonds, or securities, assets or effects of any kind as aforesaid, has been so embezzled. And in all cases, such fine so operating as a judgment, shall only be released or entered as satisfied by the party in interest as aforesaid. Any failure or refusal to pay over the public money or any part thereof, by any officer or other person, charged with the collection, receipt, transfer, disbursement, or safe-keeping of the public money or any part thereof, whether belonging to the state, or to any county, or precinct or school district or organized city or incorporated village in this state, or any other public money whatever; or any failure to account to, or to make settlement within a reasonable time after a notice so to do, with any proper and legal authority, of the official accounts of such officer or person, shall be held and taken as *prima facie* evidence of such embezzlement. And the refusal of any such officer or person, whether in or out of office, to pay any draft, order, or warrant which may be drawn upon him, by the proper officer, for any public money in his hands, no matter in what capacity the same may have been received or may be held by him, or any refusal, by any person or public officer named in this act, to pay over to his successor any public moneys, or securities promptly, on the legal requirement of any authorized officer of the state or county, shall be taken on the trial of any indictment against such officer or person for embezzlement, as *prima facie* evidence of such embezzlement.

**SEC. 125. [Obtaining money, etc., by false pretenses.]**—If any person, by false pretense or pretenses, shall obtain from any other person any money, goods, merchandise, or effects whatever, with intent to cheat and defraud such

persons of the same, or shall fraudulently make and transfer any bond, bill, deed of sale, gifts, grants, or other conveyances to defeat his creditors of their just demands, of [if] the value of the property so fraudulently obtained or conveyed as aforesaid shall be thirty-five dollars or upwards, such person so offending shall be imprisoned in the penitentiary not more than seven years nor less than one year, but if the value of the property be less than thirty-five dollars, the person so offending shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the jail of the county not exceeding thirty days, and be liable to the party injured in double the amount of damages sustained thereof. [Amended 1875, 9.]

**SEC. 126. [False personation.]**—If any person shall falsely personate any other, before any court of record, or judge thereof, or before any justice of the peace, clerk of either the supreme court or other court, or any other officer of this state, who is, or may hereafter be, authorized to take the acknowledgment of deeds, powers or warrants of attorney, or to grant marriage licenses, with intent to defraud any person, body politic or corporate; any person so offending shall be imprisoned in the penitentiary not exceeding six years.

**SEC. 127. [Selling land without title.]**—If any person or persons shall knowingly sell or convey any tract of land without having a title to the same, either in law or equity, by descent, device or evidence, by a written contract or deed of conveyance, with intent to defraud the purchaser, or other person; every person so offending shall be imprisoned in the penitentiary not more than seven years nor less than one year.

**SEC. 128. [Fraudulent appropriation of merchandise by agent.]**—Every factor or agent, who shall deposit any merchandise intrusted or consigned to him, or any document so possessed or intrusted aforesaid, as a security for any money borrowed, or negotiable instrument received by such factor or agent, and shall apply or dispose of the same to his own use, contrary to good faith, and with intent to defraud the true owner, and every factor or agent who shall sell any merchandise or other property intrusted or consigned to him, in the like manner, and with the like fraudulent intent, and every other person who shall knowingly connive with, or aid, or assist any such factor or agent in any such fraudulent deposit or sale, shall be imprisoned in the penitentiary not exceeding three years nor less than one year.

**SEC. 129. [Frauds by consignors.]**—If the owner of any merchandise, or other person in whose name any merchandise shall be shipped or delivered to the keeper of any warehouse, or other factor, or agent, to be shipped, shall, after the advancement to him or them of any money, or the giving to him or them of any negotiable security, by the consignee or consignees of such merchandise, without the consent of such consignee or consignees being therefor first had and obtained, make any disposition of such merchandise, different from, and inconsistent with that agreed upon between such owner or other person aforesaid, and such consignee or consignees, at the time of said money being so advanced, or said negotiable security being so given, with intent to defraud or injure such consignee or consignees, said owner or other person aforesaid, and all other persons conniving with him or them for the purpose of deceiving, defrauding, or injuring the said consignee, shall be imprisoned in the penitentiary, not more than three years nor less than one year; *Provided, however,* That no person shall be subject to prosecution under this section, who shall, before disposing of such merchandise, pay, or offer to pay to the consignee or consignees the full amount of any advancement made thereon.

**SEC. 130. [False bills of lading and receipts.]**—If any person shall execute and deliver, or shall cause, or procure to be executed and delivered to any person, any false or fictitious bill of lading, receipt, schedule, invoice, or other written instrument, to the purport and effect that any goods, wares, merchandise, live stock, or other property usually transported by carriers, had been or were held, delivered, received, placed, or deposited on board of any steamboat, or water-

craft, navigating the waters in or bordering upon the state of Nebraska, or at the freight office, depot, station, or other place designated or used by any railroad company or other common carrier, for the reception of any such property so usually transported by carriers, when such goods, wares, merchandise, live stock, or other property, were not held, or had not in fact and in good faith been delivered, received, or deposited on board of such steamboat, or other water-craft, or at such freight office, depot, station, or other place so designated or used by any common carrier for the reception of such property, when such bill of lading, receipt, invoice, schedule, or other written instrument was made and delivered, according to the purport and effect of such bill of lading, receipt, invoice, schedule, or other written instrument, with intent to deceive, defraud, or injure any person or corporation, or if any person shall attempt to indorse, assign, transfer, or put off any such false or fictitious bill of lading, receipt, invoice, schedule, or other written instrument, knowing the same to be false, fraudulent, or fictitious, the person so offending shall be imprisoned in the penitentiary, not exceeding four years nor less than one year.

SEC. 131. [**Same.**—If any person shall execute and deliver, or shall cause or procure to be executed and delivered to any other person, any false and fictitious warehouse receipt, acknowledgment, or other instrument of writing, to the purport and effect that such person, or any other person or persons, copartnership, firm, body politic or corporate, which he or she represents, or pretends to represent, held or had received in store, or held or had received in any warehouse, or in any other place, or held or had received into possession, custody, or control, of such person or persons, copartnership, firm, or body-politic, any goods, wares, or merchandise, when such goods, wares, or merchandise were not held and had not been received in good faith, according to the purport and effect of such warehouse receipt, receipt, acknowledgment, or instrument of writing, with intent to defraud, deceive, or injure, any person whomsoever, or if any person shall indorse, assign, transfer, or deliver, or shall attempt to indorse, transfer, or deliver to any other person any such false and fictitious warehouse receipt, receipt, acknowledgment, or instrument of writing, knowing the same to be false, fraudulent, or fictitious, such person shall be punished by imprisonment in the penitentiary not more than three years nor less than one year.

SEC. 132. [**Frauds of parties having possession of merchandise by virtue of warehouse receipts etc.**—If any person or persons, or the agent of any person or persons, having in his or their possession, custody, or control, any goods, wares, or merchandise, by virtue of any genuine instrument of writing, of the purport or effect of any such instrument of writing as is mentioned in either of the last two preceding sections, shall without authority, and with intent to injure or defraud the rightful owner thereof, sell, assign, transfer, or incumber such goods, wares, or merchandise, or any part thereof, to the value of fifty dollars or upward, or shall in any way convert the same to his own use, or if the consignor or consignors, or the agent of such consignor or consignors of any goods, wares, or merchandise, not being the absolute owner thereof, and not having authority to stop, countermand or change the consignment thereof, or not having authority to sell or incumber the same during the transit, shall, after the shipment thereof on board any water-craft, or, after the deposit thereof in or upon any vehicle for land carriage, in any way stop, countermand or change the consignment thereof, or shall sell, dispose of, or incumber such goods, wares, or merchandise, during their transit or after their delivery, or shall in any way convert the same, or any part thereof, to his or her own use, to the value of fifty dollars or upward, so that the rightful owner thereof shall sustain a loss thereby to the value of fifty dollars or upward, the person so offending, with intent as aforesaid, shall be imprisoned in the penitentiary for a term not less than one nor more than four years.

SEC. 133. [**Railroad agent diverting freight.**—Any railroad company, whose agent or agents shall knowingly divert, or permit to be diverted, any

freights that may come under his or their control, from the railroad or railroads over which the same may have been ordered to be conveyed, as aforesaid, shall forfeit and pay to the railroad company or companies from which said freights have been so diverted, three times the amount received for transporting such freights; and such agent or agents shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than thirty days, or both, at the discretion of the court; *Provided*, That the provisions of this act shall in no way interfere with any lawful obligations heretofore entered into by any railroad company.

SEC. 134. [**Fraud by partners.**—Every partner who shall be guilty of any fraud in the affairs of the partnership, shall be liable civilly to the party injured to the extent of his damage, and shall be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both, at the discretion of the court.

SEC. 135. [**Embezzlement and frauds by bank officers.**—Every president, director, cashier, teller, clerk, or agent of any banking company, who shall embezzle, abstract, or wilfully misapply any of the moneys, funds, or credits of such company, or shall, without authority from the directors, issue, or put in circulation, any of the notes of such company, or shall, without such authority, issue, or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any note, bond, draft, bill of exchange, mortgage, judgment or decree, or shall make any false entry on any book, report or statement of the company, with an intent in either case to injure or defraud such company, or, to injure or defraud any other company, body corporate or politic, or any other individual person, or to deceive any officer or agent appointed to inspect the affairs of any banking company in the state, shall be confined in the penitentiary not less than one year nor more than ten years.

SEC. 136. [**False weights—Measures.**—Any person or persons who shall knowingly and wilfully sell, or direct, or permit any person or persons in his or their employ, to sell any commodity or article of merchandise, and make or give any false or short weight or measure, or any person or persons owning or keeping or having charge of any scales or steelyards for the purpose of weighing live stock, hay, grain, coal, or other articles, who shall knowingly and wilfully report any false or untrue weight, whereby any other person or persons may be defrauded, or injured, such person or persons shall be fined in any sum not exceeding fifty dollars, or be imprisoned in the jail of the county not exceeding thirty days, or both, at the discretion of the court, and also be answerable to the party defrauded or injured in double damages.

SEC. 137. [**Certain articles put up in casks, cases, etc., to be weighed and marked.**—Any person, agent, or clerk who shall put up, or shall order or procure any other person to put up or pack, sugar, rice, tobacco, soap, starch, candles, cheese, or any goods or articles sold by weight, packed in kegs, barrels, tierces, casks, boxes, hogsheads, or any case whatever, shall, in every instance, first weigh the entire box or cask, or whatever it may be, and plainly cut or mark upon the head or most convenient part thereof, the exact number and fractions of pounds it weighs, and when packed or filled shall again ascertain the whole weight, and place the same immediately above the cut or marked tare weights, and subtract the one from the other, showing the net weight of the contents, which calculation shall not be obliterated while the bulk remains unbroken; and said articles, until the bulk is broken, shall be sold by the net weight; *Provided, however*, That nothing in this section shall be so construed as to release any person from the liability of allowing the actual tare at the time of sale on all kegs, barrels, tierces, casks, boxes, hogsheads, or cases containing articles which by their nature are liable to change the original tare.

SEC. 138. [**Change of marks, or lids, etc.**—Any brand, mark, or stamp, put upon any keg, barrel, box, cask, hogshead, or case, by the manufacturer, indicating the articles, its quality, quantity or the manufacturer's name, or either of them, shall be considered the manufacturer's certified brand, stamp or

mark, and shall be put thereon in such manner as to be identified by the manufacturer or his authorized agent, which shall be subject to no erasure or obliteration; neither shall such box lids, keg, barrel, hogshead, tierce, or cask heads, be transferred from one to the other, for the purpose of taking advantage of said brands, stamps, or marks, to sell an inferior article, or repacking take place, putting an inferior article into a superior branded keg, barrel, cask, hogshead, box, or case, to accomplish the same design; or to mark, or re-mark, anything containing pound bulk, so as to hide from view the original manufacturer's mark, stamp or brand.

SEC. 139. [Penalty for violation of last two sections.]—Any person, directly or indirectly, transgressing any of the provisions enumerated in the last two preceding sections, shall, in all cases pay to the party aggrieved double in value of the difference between the actual quantity contained in such keg, barrel, cask, tierce, box, hogshead, or in whatever the same may be contained, and the net quantity or weight for which the same may have been sold; and for the first offense, be subject to a fine not less than twenty nor more than sixty dollars, or imprisonment in the county jail not less than thirty days nor more than sixty days; and for the second and every subsequent offense he shall be subject to a fine not less than fifty dollars nor more than one hundred dollars, or imprisonment in the county jail not less than thirty, nor more than ninety days. [Amended 1875, 10.]

SEC. 140. [Adulterating liquors—Selling same.]—If any person shall put into any barrel, cask or other vessel having the private stamp, brand, wrapper, label or trade mark usually affixed by any maker of wine from grapes grown within the state of Nebraska, adulterated liquors for the purpose of deceiving any person by the sale thereof, or of [if] any person or persons shall knowingly manufacture, vend, or give away, or direct, or permit any person or persons in his or their employ to manufacture, vend or give away any malt, spirituous liquors, or other compound, any of which shall be adulterated with poisonous ingredients, such as strychnine, strontia, sugar of lead, or other poisonous substances, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding three months, or both, at the discretion of the court. An analysis made by a practical chemist shall be deemed competent [testimony] in all cases arising under this section. . . [Id.]

SEC. 141. [Frauds on life insurance companies.]—If any person or persons shall obtain, cause to be obtained, or attempt to obtain from any life or accident insurance company, any sum of money, on any policy of life or accident insurance issued by any company in this state, by falsely or fraudulently representing the person or persons insured as dead, or shall cause any person or persons to be insured under an assumed name, and shall falsely represent the fictitious person or persons so insured as dead, and shall thereby obtain, cause to be obtained, or attempt to obtain from such company the amount of such insurance, and shall falsely obtain, cause to be obtained, or attempt to obtain, from any such life or accident insurance company any sum of money, upon any life or accident policy of such company, by means of false and fraudulent written representation or affidavits, falsely representing that the person whose life was insured was dead, or that the person insured against accident was injured; every person so offending, if the sum so obtained, attempted or caused to be obtained shall be equal to, or exceed the sum of thirty-five dollars, shall be punished by imprisonment in the penitentiary not exceeding fifteen years; and if the sum so obtained, attempted or caused to be obtained, shall be less than thirty-five dollars, shall be fined in any sum not more than five hundred dollars, or be imprisoned in the jail of the proper county not exceeding six months, or both, at the discretion of the court.

SEC. 142. [Unlawful banking.]—If any person shall subscribe or become a member of, or be in any way interested in any association or company for the

purpose of issuing or putting in circulation any bill, check, ticket, certificate of deposit, promissory note, receipt, or other paper of any bank, to circulate as money in this state, without being authorized so to do under the laws of this state, or of the United States, he shall be punished by imprisonment in the penitentiary not more than one year, and by a fine of not more than one thousand dollars.

**SEC. 143. [Issuing unlawful currency.]**—If any person, number of persons or corporation, in this state, without special leave from the legislative assembly, or authority from the government of the United States, shall emit or utter any bill of credit, make, sign, draw, or endorse any bond, promissory note, or writing, bill of exchange or order, to be used as a general circulating medium, as or in lieu of money or other currency, every such person or persons, or members of such corporation, assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding three hundred dollars, or be imprisoned not exceeding one year.

**SEC. 144. [Fraud in county contracts for building.]**—Any county commissioners or persons employed by them, whose duty it shall be to superintend in whole or in part, the erection of any court house, jail, infirmary, or bridge, or the addition to, alteration or improvement of the same, or the making of the plans, description and specifications of the labor to be performed and materials to be furnished, and the estimates of the cost thereof, or the estimates of the amount of labor done and materials furnished from time to time, under and in accordance with the terms and conditions of the contract to be made, who shall in the performance of such duty knowingly permit the work to be done in any other mode or manner than as prescribed in such plans, descriptions and specifications, unless the same shall be done with the approval and consent of the officers, to whom the plans, drawings, representations, bills of material, and specifications of work, and estimates of the cost thereof in detail, and in the aggregate, are required to be submitted for approval, or with material different from that required by such bills of material, unless done with the consent and approval of said officers as aforesaid, or shall knowingly make false estimates of the labor done and material furnished in the quantity or price thereof, shall be fined in any sum not less than one hundred nor more than one thousand dollars, and shall be imprisoned in the county jail not less than three nor more than six months, and be liable to the county in which such misdemeanor may be committed for double the amount such county shall be damaged by reason thereof

## CHAPTER XVII.—FORGERY, COUNTERFEITING, ETC.

**SEC. 145. [Forgery.]**—If any person shall falsely make, alter, forge, counterfeit, print, or photograph any record, or other authentic matter, of a public nature; or any license, or any certificate authorized by the laws of this state; or any charter, letters patent, deed, lease, writing obligatory, will, testament, annuity, bond, covenant, bank bill or note, check, draft, bill of exchange, contract, or promissory note, for the payment of money or other property; or, any note, bond, coupons, stamps, postage, or fractional currency, or any security issued under authority of any act or acts of the Congress of the United States; or any acceptance of a bill of exchange; or the number of any principal sum of any accountable receipt, for any note; or any order, or any warrant or request, for the payment of money, or the delivery of goods and chattels of any kind; or any acquittance or receipt, either for money or goods; or any acquittance, release or discharge of any debt, account, action, suit, demand or other thing, real or personal; or any plat, draft or survey of land; or any transfer or assurance of money, stock, goods, chattels, or other property whatever; or any letter of attorney, or any other power to receive money, or to receive and transfer stock or annuities;

**SEC. 145.** If an instrument does not purport on its face to be good and valid for the purpose for which it was created, it cannot legally be the subject of forgery if not genuine. 5 Neb. 177. On an indictment for forgery of note of \$500, interest payable semi-annually, the note offered in evidence called for interest payable annually, and showed partial payments; held a variance. 10 Neb. 592.

or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal; or any bills drawn by the auditor of public accounts, for the payment of money at the treasury; or any check, ticket, order, or pass, purporting to have been issued by any railroad company, or by any officer or officers thereof, or by any street railroad company, or owner, or by any toll bridge company, or owner; or any private stamp, brand, wrapper, label, or trade-mark, usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to or upon the goods, wares, merchandise, preparation or mixture of such mechanic, manufacturer, druggist, merchant, or tradesman; or the seal of any public officer or office authorized or established in pursuance of the laws of this state, or of the United States, with intent to damage or defraud any person or persons, body-politic or corporate, or any military body organized under the laws of this state; or shall utter or publish, as true and genuine, or cause to be uttered or published as true and genuine, or shall have in his possession with intent to utter and publish, as true and genuine, any of the above named false, altered, forged, counterfeited, falsely printed, or photographed matter, above specified and described, knowing the same to be false, altered, forged, counterfeited, falsely printed, or photographed, with intent to prejudice, damage, or defraud any person or persons, body-politic or corporate; every person so offending shall be imprisoned in the penitentiary for any space of time not exceeding twenty years, nor less than one year, and pay a fine not exceeding five hundred dollars.

**SEC. 146. [Possession of forging instruments or forged matter.]** If any person shall have in his possession any die or dies, plate or plates, brand or brands, engraving, imprint, printed labels, wrappers, or any other instrument, thing, or means whatever, with intent therewith or thereby to falsely make, forge, or counterfeit any matter specified in the last preceding section, or to cause or enable the same to be done; or shall have in his possession any such falsely made, forged or counterfeited matter, whether the same be completely or only partly executed, for the purpose of bartering, selling or disposing thereof, knowing the same to be falsely made, forged, or counterfeited, with intent thereby to prejudice, damage, or defraud any person or persons, body politic or corporate; every person so offending shall be imprisoned in the penitentiary not less than six months, nor more than ten years, and pay a fine not exceeding one thousand dollars.

**SEC. 147. [Forged bank notes—Notes of fictitious bank.]**—If any person shall sell, barter, or in any manner dispose of any false, forged, or counterfeited bank note or notes; or shall barter, sell, or in any manner dispose of any counterfeit bank note or notes, the same not being filled up, or the signatures thereto forged or affixed, whether by single bill or by sheets; or shall sell, barter, or in any manner dispose of any bank note or notes, the same being filled up, but having the signatures of persons, not the officers of the bank from which such note or notes purport to have been issued, or having the names of fictitious persons thereto; or if any person shall be detected with any such spurious bank note or notes in his possession, for the purpose of selling, bartering, or disposing of the same; or if any person shall make, alter, publish, pass, or put in circulation, any note or notes, bill or bills, purporting to be the note or notes, bill or bills, of a bank, company, or association, which never did in fact exist; such person or persons, knowing at the time of publishing, passing, or putting in circulation, any such note or notes, bill or bills, that the bank, company, or association, purporting to have issued the same, never did exist; every person so offending shall be imprisoned in the penitentiary not more than fifteen years nor less than one year, and pay a fine not exceeding five hundred dollars.

**SEC. 148. [Plate for counterfeiting bank bills.]**—If any person shall engrave any plate for striking or printing any false or counterfeit bank notes, knowing it to be designed for that purpose, or shall, knowingly, have in his possession, and secretly keep, any plate for the purpose aforesaid; and if any person

shall engrave, cut, indent, or cause any piece or pieces of brass, copper, or any other metal, for striking, printing, or altering any of the writing, printing, or figures of any bank note or notes, bill or bills, knowing them to be designed for that purpose; or shall knowingly have in his possession, and secretly keep the same for the purpose aforesaid; every person so offending shall be imprisoned in the penitentiary, not more than fifteen years, nor less than one year.

**SEC. 149. [Goods with counterfeit mark on them.]**—Any person who shall vend or keep for sale any goods, merchandise, mixture, or preparation, upon which any forged or counterfeit stamps, brands, imprints, wrappers, labels, or trade marks be placed or affixed, and intended to represent the said goods, merchandise, mixture, or preparation as the true and genuine goods, merchandise, mixture, or preparation of any person or persons, knowing the same to be counterfeit, shall be punished by a fine not exceeding one hundred dollars.

**SEC. 150. [Counterfeiting coin — Instruments to counterfeit coin.]**—If any person shall counterfeit any of the coins of gold, silver, or copper, currently passing in this state, or shall alter, or put off counterfeit coin or coins, knowing them to be such, or shall make any instrument for counterfeiting any of the coins aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession, and secretly keep, any instrument for the purpose of counterfeiting any of the coins aforesaid; every person so offending shall be imprisoned in the penitentiary, not more than fifteen years nor less than one year, and pay a fine not less than one hundred nor greater than three hundred dollars.

**SEC. 151. [Gilding current coin.]**—If any person shall gild any of the silver coins currently passing in this state, or shall gild any other metal having the likeness and similitude of any of the coins currently passing in this state, so as to give it the appearance of any of the gold coins of the United States or any other gold coins currently passing in this state, with intent to injure or defraud, or if any person shall pass, or put in circulation, any such false or gilded money, knowing that it is not genuine; the person so offending shall be imprisoned in the penitentiary, not more than five years nor less than one year.

**SEC. 152. [Counterfeit coin or bank notes.]**—If any person shall attempt to pass any base or counterfeit coin or coins, knowing them to be such, or shall attempt to pass any false, forged, and counterfeited bank note or notes, knowing them to be such, every person so offending shall be imprisoned in the penitentiary, not more than five years nor less than one year, and pay a fine not exceeding five hundred dollars nor less than one hundred dollars.

**SEC. 153. [Spurious coin for sale.]**—If any person shall sell, barter, or in any manner dispose of, any false, forged, or counterfeit coin, made in the likeness and similitude of any of the gold, silver, copper or nickel coin or coins currently passing in this state, or if any person shall be detected with any such false, forged, or counterfeit coin or coins in his or her possession for the purpose of selling, bartering, or disposing of the same, knowing the same to be false, forged, or counterfeit, every person so offending shall be imprisoned in the penitentiary, not more than ten years nor less than one year, and pay a fine not exceeding one hundred dollars.

**SEC. 154. [Having in possession spurious coin or bank bills.]**—If any person shall be detected with any false, forged, base, or counterfeit coin or coins, made in the similitude of any gold, silver, copper, or nickel coin or coins currently passing in this state, in his or her possession, for the purpose of uttering and publishing the same as true and genuine, knowing the same to be false, forged, base, or counterfeit, every such person shall be imprisoned in the penitentiary, not more than ten years nor less than one year.

#### CHAPTER XVIII.—PERVERSION OF PUBLIC JUSTICE.

**SEC. 155. [Perjury.]**—If any person having taken a lawful oath, or made lawful affirmation in any judicial proceeding, or in any other matter where, by



law, an oath or affirmation is required, shall upon such oath or affirmation wilfully and corruptly depose, affirm or declare any matter to be fact, knowing the same to be false, or shall in like manner deny any matter to be fact, knowing the same to be true; every person so offending shall be deemed guilty of perjury, and shall be imprisoned in the penitentiary not more than fourteen years nor less than one year.

SEC. 156. [**Subornation of perjury.**—If any person shall persuade, procure or suborn any other person to commit wilful and corrupt perjury, every person so offending shall be imprisoned in the penitentiary not more than ten years nor less than one year.

SEC. 157. [**Extortion.**—If any judge, justice, sheriff, coroner, constable, jailer, or other officer of this state, either judicial or ministerial, shall knowingly ask demand or receive any fee or reward to execute or do his duty, other than is or shall be allowed by the laws of this state; every person so offending shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the jail of the county not exceeding ten days, or both, at the discretion of the court.

SEC. 158. [**Usurpation.**—If any person shall take upon himself to exercise or officiate in any other office or place of authority, in this state, without being legally authorized, the person so offending shall be fined in a sum not exceeding two hundred dollars, or imprisoned in the jail of the county, and be fed on bread and water only, not exceeding ten days, or both, at the discretion of the court.

SEC. 159. [**Stirring up suits and controversies.**—If any judge, justice of the peace, clerk of any court, sheriff, coroner, constable, attorney or counsellor at law shall encourage, excite and stir up any suit, quarrel or controversy between two or more persons, with intent to injure such person or persons, such judge, justice of the peace, clerk, sheriff, constable, attorney or counsellor at law shall be fined in any sum not exceeding five hundred dollars, and shall be answerable to the party injured in treble damages.

SEC. 160. [**Oppression under color of office.**—If any sheriff, coroner, constable, jailer, clerk, county recorder, county clerk, county treasurer or assessor, by color of or in the execution of his office shall designedly, wilfully or corruptly injure, defraud, or oppress any person, or shall attempt to defraud, injure or oppress any person, such sheriff, coroner, constable, jailer, clerk, county recorder, county clerk, county treasurer or assessor shall, on conviction thereof, be fined in any sum not exceeding two hundred dollars, and be answerable to the party so injured, defrauded, or oppressed, in treble damages.

SEC. 161. [**Refusing to aid officer arresting criminal.**—If any person having been called upon by the sheriff, or other ministerial officer, in any county in this state to assist such sheriff or other officer in apprehending any person charged with, or convicted of, any offense against any of the laws of this state, or in securing such offender when apprehended, or in conveying such offender to the jail of the county, shall neglect or refuse to render such assistance, every person so offending shall be fined in any sum not exceeding fifty dollars.

SEC. 162. [**Sheriff, etc., suffering criminal to escape.**—If any sheriff, coroner, jailer, or other person whatsoever having any offender in custody, charged with, or convicted of, any offense made punishable by the laws of this state, shall voluntarily suffer such offender to escape and go at large, every sheriff, coroner, jailer, or other person so offending shall be fined in any sum not exceeding five hundred dollars, or be imprisoned not exceeding ten days, or both, at the discretion of the court.

SEC. 163. [**Assisting criminal, etc., to escape.**—If any person shall aid or assist any prisoner, confined in any jail, or other place of confinement, charged with, or convicted of, any offense against the laws of this state, to make his or her escape from such jail or place of confinement, although no escape be actually made; every person so offending shall be fined not more than five hundred, nor less than fifty dollars, or be imprisoned in the jail of the county, not exceeding thirty days, or both, at the discretion of the court.

**SEC. 164. [Bribing or influencing a juror or witness.]**—If any person shall attempt to corrupt or influence any juror or witness, either by promises, threats, letters, money, or other undue means either directly or indirectly; every person so offending, shall be fined in any sum not exceeding five hundred dollars, and imprisoned in the jail of the county, not exceeding thirty days.

**SEC. 165. [Juror or witness receiving a reward.]**—If any juror or witness shall corruptly take and receive any money, goods, chattels, or other reward, either directly or indirectly, in any action or suit instituted before any court having jurisdiction thereof; such juror or witness so offending, shall be fined in any sum not exceeding five hundred dollars, and imprisoned in the jail of the county, not exceeding thirty days.

**SEC. 166. [Bribing to procure the escape of a criminal.]**—If any person shall, by bribery, persuasion, seduction, or any other arts or means whatever, attempt to prevail upon any ministerial officer, or other person charged with the safe keeping of any person accused or convicted of any offense against the laws of this state, to permit such person to escape from the custody of such officer or other person; every person so offending, shall be fined in any sum not more than five hundred, nor less than twenty-five dollars.

**SEC. 167. [Suffering jail to become unclean.]**—If any sheriff or jailer, or any other person having the care and custody of any jail, shall suffer the same to become foul and unclean, so that the health of any prisoner may be endangered; such sheriff, jailer, or other person shall be fined in any sum not exceeding one hundred dollars.

**SEC. 168. [Neglecting to serve warrant in felonies.]**—When any warrant, legally issued by any magistrate of this state, in any criminal case, shall be delivered into the hand of any constable or other officer, to be executed, whose duty it shall be to execute such warrant, it is hereby made the duty of such constable or other officer, to serve the same immediately; and if such constable or other officer shall neglect or delay to serve any such warrant, delivered to him as aforesaid, when in his power to serve the same, either alone or by calling upon assistance, according to law, such constable or other officer, shall, if the offense charged for which the warrant issued be a felony, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail ten days, or both, at the discretion of the court.

**SEC. 169. [Same, in misdemeanors.]**—If any constable or other officer shall be guilty as specified in the preceding section, of neglect or delay in serving any warrant, when the offense charged, for which such warrant may issue, be an offense not punishable by death or imprisonment in the penitentiary; such constable or other officer shall be fined in any sum not exceeding one hundred dollars, or imprisoned not exceeding ten days, or both, at the discretion of the court.

**SEC. 170. [Conviction—Forfeiture of office.]**—A conviction of any officer, of either of the offenses specified in the two last preceding sections, shall be a forfeiture of his office, and the same shall immediately become vacant.

**SEC. 172. [Dealing with prisoner less severely than sentence warrants.]**—If any sheriff or jailer, or any other person, having the care and custody of any jail, shall suffer any person sentenced to imprisonment therein for any offense, to be dealt with in a manner less severe than is required by law, such sheriff or jailer shall be fined in any sum not exceeding one hundred dollars.

**SEC. 173. [Rescue of prisoners.]**—If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, or shall aid in the escape of such convict, such person shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in the custody of an officer or in the penitentiary, or shall

aid in the escape of such convict, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

**SEC. 174. [Disguise, arms or tools to aid an escape.]**—Every person who shall convey into a state prison, jail, or other place of confinement, any disguise, instrument, arms, or other thing proper or useful to aid any prisoner in his escape, with intent thereby to facilitate the escape of any prisoner committed to, or detained in such prison, jail, or place of confinement, charged with, or convicted of any offense against the laws of this state, or the United States, whether such escape be effected or attempted, or not, shall be fined not more than five hundred, nor less than fifty dollars, or be imprisoned in the jail, not exceeding three months, or both, at the discretion of the court.

**SEC. 175. [Bribery—Accepting bribes.]**—If any person, shall directly or indirectly, give any sum, or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation or security, for the payment of any money, present, or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, prosecuting attorney, member of the legislative assembly, or other officer, ministerial or judicial, but such fees as are allowed by law, with intent to induce or influence such officer to appoint or vote for any person for office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed or voted for any person for any office, or exercised any power in him vested, or performed any duty of him required, with partiality or favor, or otherwise contrary to law, the person so giving, and the officer so receiving any money, bribe, present, reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and shall be punished by confinement in the penitentiary not less than one year nor more than five years.

**SEC. 176. [Same.]**—Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, prosecuting attorney, or other ministerial or judicial officer in any of the cases mentioned in the last preceding section, and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, prosecuting attorney, or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases mentioned in the said preceding section, shall be fined in a sum not exceeding five hundred dollars, nor less than three hundred dollars.

**SEC. 177. [Compounding crimes.]**—If any person shall take money, goods, chattels, lands, or other reward, or promise thereof, to compound any criminal offense, such person shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offense.

**SEC. 178. [Conspiracy.]**—If any two or more persons shall conspire or agree, falsely and maliciously, to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offense, each of the persons so offending shall be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

**SEC. 179. [Mutilating records.]**—If any person shall wilfully and maliciously alter, deface, mutilate, destroy, abstract, or conceal any record, or part thereof, authorized to be made by any law of this state, of or pertaining to any court, justice of the peace, or any state, county, district or municipal office or officer, or any other public record so authorized, or any paper or writing duly filed with, in or by any such court, justice of the peace, office or officer, every such person shall be deemed guilty of a misdemeanor, and shall be fined in any sum not exceeding three hundred dollars, or be imprisoned in the county jail not exceeding three months, or both at the discretion of the court.

**SEC. 180. [Neglect or malfeasance of certain officers.]**—Any magistrate, clerk of the court, sheriff, constable, or other officer mentioned in chapter fifty of this code, who shall neglect or refuse to perform any duty required of such officer by any provision of said chapter fifty, or any clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor, prosecuting or district attorney, or any ministerial officer, who shall be guilty of any palpable omission of duty, or who shall wilfully or corruptly be guilty of malfeasance or partiality in the discharge of his official duties, shall be fined in a sum not exceeding two hundred dollars, and the court shall have power to add to the judgment that any officer so convicted shall be removed from office; *Provided*, That the removal of a clerk of the district court from office shall not remove such officer from the office of the county clerk but in such case the judge shall have power to appoint such clerk of the district court until the next general election of county officers. The court shall have the power, whenever any clerk of the district or supreme court, or the district or prosecuting attorney, shall be presented or indicted, to appoint for that occasion a prosecuting attorney or clerk, as the case may require, who shall thereby be invested, in relation to such presentment or indictment, with all the powers of clerk or prosecuting attorney. It shall be the duty of the court, when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

#### CHAPTER XIX.—OFFENSES AGAINST ELECTION LAWS.

**SEC. 181. [Effect of chapter.]**—The provisions of this chapter shall apply to all elections authorized by the laws of this state.

**SEC. 182. [Voting out of precinct.]**—Any person who shall vote in any precinct, or in any ward of a city in this state, in which he has not actually resided ten days, or such length of time as required by law, next preceding the election, or into which he shall have come for temporary purposes merely, shall be fined in any sum not exceeding five hundred dollars nor less than fifty dollars, and be imprisoned in the jail of the proper county not more than six months.

**SEC. 183. [Voting out of county.]**—Any person being a resident of this state, who shall go or come into any county, and vote in such county, not being an actual resident thereof for forty days next preceding the election, or for such time as may at the time be required by law, shall, on conviction thereof, be imprisoned in the penitentiary not more than three years.

**SEC. 184. [Voting more than once.]**—Any person who shall vote more than once at the same election, shall be imprisoned in the penitentiary not more than five years nor less than one year.

**SEC. 185. [Resident of another state.]**—Any resident of another state who shall vote in this state, shall, on conviction thereof, be imprisoned in the penitentiary not more than five years.

**SEC. 186. [Want of residence.]**—Any person who shall vote, who shall not have been a resident of this state for six months, or such time as required by law, immediately preceding the election, or who, at the time of the election, is not twenty-one years of age, knowing that he is not twenty-one years of age, or who is not a citizen of the United States, and has not filed his declaration to become such according to the laws of the United States, knowing that he is not such citizen, and that he has not filed such declaration, or who, being disqualified by law, by reason of his conviction of some infamous crime, shall not have been pardoned and restored to all the rights of a citizen, shall be imprisoned in the county jail of the proper county not more than six months.

**SEC. 187. [Assisting another to vote unlawfully.]**—Any person who shall procure, aid or assist, counsel or advise another to give his vote, knowing that such other person has not been a resident of this state six months, or such time as required by law, immediately preceding the election; or that, at the time of the election, he is not twenty-one years of age; or that he is not a citizen of

the United States, and that he has made no declaration according to law to become such citizen; or that he is not duly qualified from other disability to vote at the place where, and the time when the vote is to be given, shall be fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not more than six months.

**SEC. 188. [Procuring another to go into another county to vote.]**—Any person who shall procure, aid, assist, counsel, or advise another to go or come into any county, for the purpose of giving his vote in such county, knowing that the person is not duly qualified to vote in such county, shall be imprisoned in the penitentiary not more than five years nor less than one year.

**SEC. 189. [Bribing or threatening to influence vote.]**—Any person who shall, by bribery, attempt to influence any elector of this state, in giving his vote or ballot, or who shall use any threat to procure any elector to vote contrary to the inclination of such elector, or to deter him from giving his vote or ballot, shall be fined in any sum not exceeding five hundred dollars, and be imprisoned in the county jail not more than six months.

**SEC. 190. [Deceiving illiterate electors.]**—Any person who shall furnish an elector who can not read, with a ticket, informing him that it contains a name or names different from those which are written or printed thereon, with an intent to induce him to vote contrary to his inclination; or who shall fraudulently or deceitfully change a ballot of any elector, by which such elector shall be prevented from voting for such candidate or candidates as he intended, shall be imprisoned in the penitentiary not more than three years.

**SEC. 191. [Misconduct by officers of elections.]**—If any judge of the election shall knowingly receive, or sanction the reception of a vote from any person not having all the qualifications of an elector prescribed by the laws of this state; or shall receive, or sanction the reception of a ballot from any person who shall refuse to answer any question which shall be put to him in accordance with the requirements of the laws of this state; or who shall refuse to take the oath prescribed by the laws of this state; or shall refuse or sanction the refusal by any other judge of the board to which he shall belong, to administer any oath or affirmation required by the laws of this state, and in such case required to be administered; or if any judge of the election shall refuse to receive, or shall sanction the rejection of a ballot from any person, knowing him to have the qualifications of an elector under the provisions of the laws of this state, at the place where such elector offers to vote, or if any judge, or clerk of the election, on whom any duty is enjoined by the laws of this state, shall be guilty of any wilful neglect of any such duty, or of any corrupt conduct in the execution of the same; such judge or clerk shall be fined in any sum not more than one thousand dollars nor less than three hundred dollars, and be imprisoned in the jail of the county, not more than six months nor less than three months; *Provided*, That so much of the provisions of this section as may be superseded by any registration laws in force, shall not be operative where such laws are in force.

**SEC. 192. [Fraudulent voting.]**—Any person or persons who shall, either before or after proclamation is made of the opening of the polls, fraudulently put a ballot or ticket into the ballot-box, shall be imprisoned in the penitentiary, not more than three years nor less than one year.

**SEC. 193. [Same, by judge.]**—Any judge or judges of the election who shall, after proclamation made of the opening of the polls, put a ballot or ticket into the ballot-box, except his or their own ballot or ticket, or such as may be received in the regular discharge of his or their duties as such judge or judges, or who shall knowingly permit any ballot or ticket, fraudulently placed or deposited in such ballot-box by any other person or persons, to remain therein, or be counted with the legal votes cast at such election, shall be imprisoned in the penitentiary, not more than three years nor less than one year.

**SEC. 194. [Penalty for fraud in relation to poll books, ballots, etc.]**—Any judge or clerk of any election under the laws of this state, or any

other person or persons who shall, at any time wilfully, knowingly, and with fraudulent intent, inscribe, write, or cause to be inscribed or written, in or upon any poll-book, tally-sheet, tally-list, in or upon any book or paper purporting to be such, or upon any election returns under the laws of this state, or upon any book or paper containing the same, the name or names of any person or persons not entitled to vote at such election, or not voting thereat, or any fictitious name, with intent to defeat, hinder or prevent a fair expression of the will of the people at such election, shall be imprisoned in the penitentiary, not more than three years nor less than one year.

SEC. 195. [**Penalty for possession of same.**].—Any person or persons who shall, at any time, have in his or their possession any falsely made, altered, forged or counterfeited poll book, tally sheet, tally list or election returns of any election under the laws of this state, knowing the same to be falsely made, altered, forged or counterfeited, with intent to hinder, defeat, or prevent a fair expression of the popular will at any such election, shall be imprisoned in the penitentiary not more than three years nor less than one year.

SEC. 196. [**Obtaining possession of ballots or ballot-box.**].—If any person or persons, at any election held by virtue of any laws of this state, in any ward of any city, or in any village or election precinct in any county of this state, shall unlawfully, either by force, violence, fraud or other improper means, obtain possession of any ballot-box or any ballot or ballots therein deposited, while the voting at such election is going on, or before the ballots shall have been duly taken out of such ballot-box by the judges of election according to law; such person or persons shall be imprisoned in the penitentiary not more than three nor less than one year, at the discretion of the court.

SEC. 197. [**Destroying ballot-box, ballots or poll books.**].—If any person or persons shall unlawfully destroy any ballot-box used, any ballot or vote deposited, any poll book kept at any election held by virtue of any law of this state; such person or persons shall be imprisoned in the penitentiary not less than one nor more than five years, at the discretion of the court.

SEC. 198. [**Same.**].—If any person or persons, at any election held by virtue of any law of this state, in any ward of any city, or in any village or election precinct of any county in this state, shall unlawfully, either by force, violence, fraud or other improper means, attempt to obtain possession of any ballot-box, or any ballot or ballots therein deposited, while the voting at such election is going on, or before the ballots shall all have been duly taken out of such ballot-box by the judges of such election, according to law; or if any person or persons shall unlawfully attempt to destroy any ballot-box used, any ballot or vote deposited, any poll book kept at any election, held by virtue of any law of this state; such person or persons shall be imprisoned in the penitentiary not less than one nor more than three years, at the discretion of the court.

SEC. 199. [**Selling liquors on election day.**].—It shall be unlawful for any person in this state to sell or give away, or dispose of with intent to evade the law, any intoxicating liquors on the day of any general or special election. Any person offending against this section shall be guilty of a misdemeanor and be punished by fine, not less than twenty-five dollars nor exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment.

## CHAPTER XX.—OFFENSES AGAINST MARRIAGE AND THE RELATION OF SEX.

SEC. 200. [**Carnal knowledge of insane woman.**].—If any male person, seventeen years old and upward, shall have carnal knowledge of any woman, other than his wife, such woman being insane, he knowing her to be such; every person so offending shall be imprisoned in the penitentiary, not more than ten nor less than three years.

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SEC. 199. See ante p. 335, liquor law passed subsequent to this section.

**SEC. 201. [Bigamy].**—That if any married person, having a husband or wife living shall marry any other person; every person so offending, shall be imprisoned in the penitentiary, not more seven years nor less than one year. But nothing contained in this section shall be construed to extend to any person whose husband or wife shall be continually and wilfully absent for the space of five years together and unheard from, next before the time of such marriage.

**SEC. 202. [Incestuous marriage].**—Marriages between parents and children, including grand parents and grand children of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, are declared to be incestuous and absolutely void. This section shall extend to illegitimate as well as legitimate children and relations.

**SEC. 203. [Lascivious cohabitation with relations].**—Persons within the degrees of consanguinity within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and upon conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

**SEC. 204. [Father with daughter].**—If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years.

**SEC. 205. [Exposure of person—Obscene language].**—If any person of the age of fourteen years and upward, shall wilfully make an indecent exposure of his or her person in any street, lane, alley, or other place, in any city, town, village, or county, or shall utter, speak or use any obscene or lascivious language or words in the presence or hearing of any female, the person so offending, shall be fined in any sum not exceeding five dollars, or be imprisoned in the cell or dungeon of the jail of the county, not exceeding ten days, or both at the discretion of the court.

**SEC. 206. [Selling obscene books, etc.].**—If any person shall hereafter bring, or cause to be brought or imported into this state for sale, or shall sell or offer to sell any obscene book, pamphlet, print, picture, or engraving; every such person shall be fined in a sum not less than twenty-five dollars nor more than fifty dollars.

**SEC. 207. [Sexual intercourse under promise of marriage].**—Any person over the age of eighteen, who, under promise of marriage, shall have illicit carnal intercourse with any female of good repute for chastity, under the age of eighteen years, shall be deemed guilty of seduction, and upon conviction, shall be imprisoned in the penitentiary not more than five years, or be imprisoned in the county jail not exceeding six months, but in such case the evidence of the female must be corroborated to the extent required as to the principal witness in cases of perjury.

**SEC. 208. [Adultery].**—If any married woman shall hereafter commit adultery, or desert her husband and live and cohabit with another man in a state of adultery, she shall, upon conviction thereof, be imprisoned in the jail of the county not exceeding one year; and if any married man shall hereafter commit adultery, or desert his wife and live and cohabit with another woman in a state of adultery, or if any married man living with his wife shall keep any other woman and wantonly cohabit with her in a state of adultery, or if any unmarried man shall live and cohabit with a married woman in a state of adultery, every person so offending shall be fined in any sum not exceeding two hundred dollars, and be imprisoned in the jail of the county not exceeding one year. [Amended 1875, 11.]

**SEC. 209. [Living in state of fornication].**—If any unmarried persons

SEC. 208. Evidence of improper familiarities between the parties, both before and subsequent to the time the offense is charged, admissible after evidence tending to prove the offense charged. 5 Neb. 287. The offense of wantonly cohabiting with a woman in a state of adultery is one continued offense, and may be properly charged as having been committed between certain points of time, and proof of cohabitation during any portion of time alleged is admissible. Id. Time not essence of the offense. Id.

shall live and cohabit together, in a state of fornication; such persons so offending shall each be fined in any sum not exceeding one hundred dollars, and be imprisoned in the county jail, not exceeding six months.

SEC. 210. [**Renting building as a brothel.**].—Every house or building situated in this state, used and occupied as a house of ill-fame, or for the purposes of prostitution, shall be held and deemed a public nuisance; and any person owning, or having the control of, as guardian, lessee, or otherwise, such house or building, and knowingly leasing or sub-letting the same in whole or in part, for the purpose of keeping therein a house of ill-fame, or knowingly permit the same to be used or occupied for such purpose, or using or occupying the same for such purpose, shall, for every such offense, be fined in any sum not exceeding one hundred dollars, or imprisoned not less than thirty days, nor more than six months, or both at the discretion of the court.

SEC. 211. [**Lessee using premises as a brothel.**].—The use or occupation by the lessee or tenant of any house or building, or any part thereof, for the purposes prohibited in the preceding section shall be held by the courts of this state good cause on the part of the owner or lessor, to avoid the agreement of lease or renting, and to re-enter at any time and take possession of such house or building.

SEC. 212. [**Procuring illicit intercourse.**].—If any person or persons shall induce, decoy, entice, hire, engage, employ, or compel any female under eighteen years of age; or if any person or persons shall cause, by compulsion or otherwise, any female over eighteen years of age, against her will, to have illicit carnal intercourse with any person other than the person so inducing, decoying, enticing, hiring, engaging, employing, or causing such female to have such illicit carnal intercourse; or if any person or persons shall knowingly permit or allow any other person to have illicit intercourse with any female of good repute for chastity, at the house, residence, or upon the premises owned or controlled by such person or persons, the person or persons so offending shall be imprisoned in the penitentiary for not more than five years.

## CHAPTER XXI.—GAMING, BETTING AND LOTTERIES.

SEC. 213. [**Charge to grand jury.**].—This chapter of the criminal code shall be given in charge to the grand jury at each regular term of district court by the judge thereof, and the district court shall have concurrent jurisdiction of any offense in this chapter. [Amended 1875, 11.]

SEC. 214. [**Gaming.**].—If any person shall play at any game whatever, for any sum of money or other property of any value, or shall make any bet or wager for any sum of money or other property of value, every such person shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not more than three months; *Provided, further,* That if any person shall lose any money or property of any value at any game whatsoever, or on any bet or wager, such person may recover the money or property so lost [of] either or all of the other persons playing at the game at which said money or property was lost, or from the person or persons with whom said bet or wager was had. [Id. 12.]

SEC. 215. [**Keeping gaming table.**].—If any person or persons shall keep or exhibit for gain any gaming table (except billiard tables), or bank, or any gaming device, or machine of any kind or description, under any denomination or name whatsoever; or if any person or persons shall keep or exhibit any billiard table for the purpose of betting and gambling, or shall allow the same to be used for such purpose, the person or persons so offending shall each be fined in any sum not less than fifty nor more than one hundred dollars, at the discretion of the court, for every such offense, and shall, moreover, find security for his or their good behavior for the period of one year in the sum of one hundred dollars. [Id.]

SEC. 216. [**Gaming on private premises.**].—If any person or persons shall suffer any game or games whatsoever to be played for gain upon or by means



of any gaming, device or machine of any denomination or name, in his or their house, or any out house, booth, arbor or erection, of which he, she or they have the care or possession, the person or persons so offending shall each pay a fine of not less than fifty nor more than one hundred dollars. [Id.]

SEC. 217. [**Gaming at public-houses.**—If any keeper or keepers of any tavern, ordinary, or other house of public resort, shall suffer any game or games whatsoever, except games of athletic exercises, to be played at or within such tavern, ordinary, or house of public resort, or in any out-house, building, or erection appendant thereto, every such keeper or keepers shall pay a fine of not less than fifty nor more than one hundred dollars. [Id. 18.]

SEC. 218. [**Keeping gambling room.**—If any person shall keep a room, building, arbor, booth, shed, or tenement, canal boat, or other water-craft to be used or occupied for gambling, or if any person being the owner of any room, building, arbor, booth, shed, or tenement, canal boat, or other water-craft, shall rent the same to be used or occupied, for gambling, the person so offending shall be fined in any sum not less than thirty nor more than one hundred dollars, or be imprisoned in the county jail not less than ten nor more than thirty [days,] or both, at the discretion of the court; and if the owner of any room, building, arbor, booth, shed, or tenement, canal boat, or water-craft, shall know that any gaming tables, apparatus or establishment is kept or used in such room, building, arbor, booth, shed, or tenement, canal boat, or other water-craft, for gambling, winning, betting, or gaining money or other property, and shall not forthwith cause complaint to be made against [the] person so keeping any such room, building, arbor, booth, shed, or tenement, canal boat, or other water-craft, he shall be taken, held, and considered to have knowingly permitted the same to be used and occupied for gambling. [Id.]

SEC. 219. [**Common gambler.**—If any person shall keep or exhibit any gaming table, establishment, device or apparatus, to win or gain money, or other property of value, or shall aid, or assist, or permit others to do the same, or of [if] any person shall engage in gambling for a livelihood or shall be without any fixed residence, and in the habit or practice of gambling, he shall be deemed and taken to be a common gambler, and shall be imprisoned in the county jail not less than one nor more than three months, and be fined in any sum not exceeding one hundred dollars. [Id. 14.]

SEC. 220. [**Enticing minor to gamble.**—If any person shall, by any device or pretense, entice or tempt, and prevail upon, or cause any minor to engage with such person, or any other person or persons, in any game whatsoever, for any sum of money or property of value, or shall make any bet or wager with such minor, or shall cause it to be done, upon the result of any game, every such person shall be fined in any sum not less than fifty dollars nor more than one hundred dollars, or be imprisoned in the county jail not less [than] one month nor more than three months. [Id.]

SEC. 221. [**Keeper of public house keeping ball or nine-pin alley.**—If any keeper of a public house, or retailer of spirituous liquors, in this state, shall establish, keep, or permit to be kept upon his or their lots or premises, any ball or nine-pin alley, or shall in whole or in part be interested in any ball or nine-pin alley, upon the lot or premises of another, he or they shall pay a fine of not less than ten nor more than one hundred dollars; and this section shall be construed to extend to any alley denominated a nine-pin alley, whether such alley is used for playing therein a greater or less number than nine pins.

SEC. 222. [**Minor in billiard saloon, etc.**—If any owner or keeper of a billiard saloon, or any owner or keeper of a billiard table, at any grocery, or other public place, shall permit or suffer any minor under the age of eighteen years, to play at any game of billiards in such grocery, saloon, or public place, or upon such billiard table, or to remain or to be in or upon the premises so occupied by him as such billiard saloon, or in which shall be such billiard table as afore-

said, every such person or persons shall forfeit and pay a fine of twenty dollars for the first offense, and fifty dollars for each and every succeeding offense.

SEC. 223. [**Betting on elections.**].—If any person shall make any bet or wager upon the event of any election held, or to be held, under the laws of this state, or shall make any bet or wager upon the election of any person to any office, post or situation, which by the constitution or laws of this state is made elective, or shall make any bet or wager upon the election of the president or vice-president of the United States, or upon the election of electors of president or vice-president of the United States, each person so offending shall be fined in any sum not less than five dollars nor more than one hundred dollars; *Provided*, That the amount of said [fine] shall, [in] all cases in which the amount hazarded by said bet is between five dollars and one hundred dollars, be equal to the amount so hazarded by said bet. [Amended 1875, 14.]

SEC. 224. [**Lotteries.**].—If any person shall open, set on foot, carry on, promote, make, or draw, publicly, or privately, any lottery, or scheme of chance, of any kind or description, by whatever name, style, or title, the same may be denominated or known; or, if any person shall, by such ways and means, expose or set to sale any house or houses, lands or real estate, or any goods or chattels, cash, or written evidences of debt, or certificates of claims, or any thing or things of value whatever; every person so offending shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court.

SEC. 225. [**Selling tickets—Agent for lottery.**].—If any person or persons shall vend, sell, barter, or dispose of any lottery ticket or tickets, order or orders, device or devices, of any kind, for, or representing any number of shares, or any interest in any lottery, or scheme of chance, or shall open, or establish, as owner, or otherwise, any lottery, or scheme of chance, in this state, or shall be in any wise concerned in any lottery, or scheme of chance, by acting as owner, or agent in this state, for or on behalf of any lottery, or scheme of chance, to be drawn, paid, or carried on, either out of or within this state, every such person shall be fined in any sum not exceeding five hundred dollars, or be imprisoned not exceeding six months, or both, at the discretion of the court.

SEC. 226. [**Advertising lottery.**].—That if any person shall by printing, writing, or in any other way publish an account of any lottery or scheme of chance of any kind or description to be carried on, held or drawn in the state of Nebraska, by whatever name, style, or title the same may be denominated or known, stating when and where the same is to be drawn, or the prizes therein, or any of them, or the price of a ticket, or show therein, or where any ticket may be obtained, or in any aiding or assisting in the same, or in anywise giving publicity to such lottery or scheme of chance, shall be subjected to a fine not exceeding one hundred dollars at the discretion of the court. [Amended 1875, 15.]

## CHAPTER XXII.—OFFENSES AGAINST PUBLIC HEALTH AND SAFETY.

SEC. 227. [**Unwholesome provisions.**].—If any butcher or other person shall knowingly sell any unwholesome flesh of a diseased animal, or other unwholesome provision, he or she shall be fined in any sum not exceeding fifty dollars.

SEC. 228. [**Stagnant water.**].—If any person shall build, erect, continue or keep up any dam, or other obstruction, in any river or stream of water in this state, and thereby raise an artificial pond, or produce stagnant waters, which shall be manifestly injurious to the public health and safety; every person so offending shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court; and the court shall, moreover, order every such nuisance to be abated or removed.

SEC. 229. [**Offensive matter into well or spring.**].—If any person or persons shall put any dead animal, carcass, or part thereof, or other filthy substance, into any well, or into any spring, brook, or branch of running water, of

which use is made for domestic purposes, every person so offending shall be fined in any sum not less than two, nor more than forty dollars.

**SEC. 230. [Exposing offensive matter].**—If any person or persons shall put the carcass of any dead animal, or the offals from any slaughter house or butcher's establishment, packing house, or fish house, or any spoiled meats, or spoiled fish, or any putrid animal substance, or the contents of any privy vault, upon or into any river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market space, or common, or if the owner or owners, occupant or occupants thereof shall knowingly permit the same to remain in any of the aforesaid situations, to the annoyance of the citizens of this state, or any of them, or shall neglect or refuse to remove or abate the nuisance occasioned thereby, within twenty-four hours after knowing of the existence of such nuisance upon any of the above described premises, owned or occupied by him, her, or them, or after notice thereof in writing, from the street commissioner, supervisor, constable, any trustee, or health officer of any city or precinct in which such nuisance shall exist, every such person shall be fined in any sum not less than one nor more than fifty dollars. And if said nuisance be not abated within twenty-four hours thereafter, it shall be deemed a second offense against the provisions of this section, and every like neglect of each twenty-four hours thereafter, shall be considered an additional offense against the provisions of this section.

**SEC. 231. [Unclean distillery sties].**—If any owner or owners, lessee or lessees, occupier or occupiers, foreman or superintendent of any distillery in this state who shall keep any hogs or other animals, shall suffer or permit such distillery, or the place or places where such hogs or animals shall be kept, to remain unclean between the first day of April and the first day of October of any year, to the annoyance of the citizens of this state, or any of them, every person so offending shall pay for such offense a fine not less than five dollars nor more than fifty dollars. And if such nuisance be not removed and abated within five days after the institution of the prosecution, the continuance of such nuisance shall be deemed a second offense against the provisions of this section; and every like neglect of each succeeding period of five days shall be considered an additional offense against the provisions of this section.

**SEC. 231 a. [Unclean cattle cars].**—**SEC. 1.** That from and after the first day of June, A. D. 1877, it shall be unlawful for any railroad company operating its road in this state, to bring or cause to be brought into this state from an adjoining state, any empty car used for transporting hogs or sheep, or any empty combination car used for carrying grain and stock that has any filth of any kind whatever in the same; but the said railroad company shall, before it allows said car or cars to pass into this state, cause the same to be thoroughly cleaned and cleansed. Any person or persons, or corporation, violating any of the above provisions, and on conviction thereof, shall be fined in any sum not to exceed one hundred dollars. [1877, 149.]

**SEC. 232. [Nuisance].**—Every person who shall erect, keep up, or continue and maintain any nuisance, to the injury of any part of the citizens of this state, shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court, and the court shall, moreover, in case of conviction of such offense, order such nuisance to be abated or removed. And the erecting, continuing, using, or maintaining any building, structure, or other place for the exercise of any trade, employment, manufacture or other business, which, by occasioning noxious exhalations, noisome or offensive smells, becomes injurious and dangerous to the health, comfort, or property of individuals or the public; the obstructing or impeding, without legal authority, the passage of any navigable river, harbor, or collection of water; or the corrupting or rendering unwholesome or impure any water-course, stream, or water; or unlawfully diverting any such water-course from its natural course or state to the injury or prejudice of others; and the ob-

**SEC. 231 a.** "An act to prevent the introduction and spread of hog cholera and kindred diseases in the state of Nebraska." Laws 1877, 149.

structing or incumbering by fences, buildings, structures, or otherwise, any of the public highways, or streets or alleys of any city or village, shall be deemed nuisances; and every person or persons guilty of erecting, continuing, using or maintaining, or causing any such nuisances, shall be guilty of a violation of this section, and in every such case the offense shall be construed and held to have been committed in any county whose inhabitants are, or have been injured or aggrieved thereby.

SEC. 233. **Fishing at certain seasons.**—That it shall be unlawful to catch any fish for the purpose of selling and packing the same for market, in this state, at any time between the first day of June and the first day of September; *Provided*, That should it be impracticable to take up or remove any stationary nets on the first of June, it shall be lawful for the owner or the person having such nets in charge to take up and remove the same at the earliest practicable day thereafter, and all fish therein at the time may be lawfully taken out, salted, and packed for market; but no more than one haul shall be taken from any net between the first day of June and the first day of September; and any person violating the provisions [of] this section shall pay for every such offense a fine of not less than fifty nor more than one hundred dollars. [Amended 1875, 15.]

SEC. 234. **[Skimmed or adulterated milk.]**—Whoever shall knowingly sell to any person or persons, or sell, deliver, or bring to be manufactured to any cheese or butter manufactory in this state, any milk diluted with water, or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as "skimmed milk," or shall keep back any part of the milk known as "strippings," with intent to defraud or shall knowingly sell the product of a diseased animal or animals, or shall knowingly use any poisonous or deleterious material in the manufacture of cheese or butter, shall be fined in any sum not less than twenty-five dollars, nor more than one hundred dollars, and be liable in double the amount of damages, to the person or persons upon whom such fraud shall be committed.

SEC. 235. **[Nitro-glycerine—Transportation.]**—It shall be unlawful to transport or carry the substance or material generally known and called nitro-glycerine, into, out of, within, through, or across this state, except as herein provided. Every wagon, cart or other vehicle used in carrying nitro-glycerine, shall have printed upon both sides and ends thereof, in plain and distinct letters, large enough to occupy a space of two inches wide by eighteen inches long, the words, "nitro-glycerine"—"dangerous;" and every package, can, cask, barrel, or box, containing nitro-glycerine shall have written or printed thereon, upon two sides thereof, in plain, and distinct letters, the words "nitro-glycerine"—"dangerous."

SEC. 236. **[Same.]**—Every railroad, stage coach, steamship, vessel, or other water craft within this state, whose business it is to carry passengers, or who shall at the time be engaged in carrying passengers, are hereby prohibited from carrying or having on board thereof nitro-glycerine; and it shall be unlawful for any person, persons, or company to permit any passenger to ride on any conveyance as aforesaid that has on board thereof any of the substance or material aforesaid.

SEC. 237. **[Same—Manufacture and storage.]**—It shall be unlawful for any person or persons to manufacture nitro-glycerine within this state, within a distance of one hundred and sixty rods of any occupied dwelling or public building, or to store the same in any quantity exceeding one hundred pounds within the limits of any city or incorporated village, or in any other place within one hundred and sixty rods of any occupied dwelling or public building.

SEC. 238. **[Same—Penalties.]**—Any person or persons knowingly offending against any of the provisions of either of the last three preceding sections shall pay a fine not exceeding one thousand dollars, or be imprisoned in the county jail not more than three months, or both, at the discretion of the court.

SEC. 239. **[Canada thistles.]**—Every owner or possessor of land shall cut or mow down all Canada thistles growing thereon, or in the highway adjoining the

same so often as to prevent their going to seed, and if any owner or possessor of land knowingly shall suffer any such thistles to grow thereon, or in any highway adjoining the same, and the seed to ripen so as to cause or endanger the spreading thereof, he shall forfeit and pay a fine not less than ten dollars nor more than forty dollars; and any person may enter on the land of another, who shall neglect or refuse to cut or mow down such thistles, for the purpose of cutting or mowing the same down, and shall not be liable to be sued in an action of trespass therefor.

**Sec. 240. [Same--Seed.]**—If any person shall, knowingly, vend any grass or other seed, in which there is any seed of the Canada thistle, such person shall, for every such offense, be fined the sum of twenty dollars.

### CHAPTER XXIII.—MISCELLANEOUS OFFENSES.

**Sec. 241. [Sabbath breaking.]**—If any person of the age of fourteen years or upward, shall be found on the first day of the week, commonly called Sunday, sporting, rioting, quarrelling, hunting, fishing or shooting, he or she shall be fined in a sum not exceeding twenty dollars, or be confined in the county jail for a term not exceeding twenty days, or both, at the discretion of the court. And if any person of the age of fourteen years or upward, shall be found on the first day of the week, commonly called Sunday, at common labor (work of necessity and charity only excepted), he or she shall be fined in any sum not exceeding five dollars nor less than one dollar; *Provided*, Nothing herein contained in relation to common labor on said first day of the week, commonly called Sunday, shall be construed to extend to those who conscientiously do observe the seventh day of the week as the Sabbath, nor to prevent families emigrating from traveling, watermen from landing their passengers, superintendents or keepers of toll bridges or toll gates from attending and superintending the same, or ferrymen from conveying travelers over the water, or persons moving their families on such days, or to prevent railway companies from running necessary trains.

**Sec. 242. [Vagrants.]**—All idle persons not having visible means of support and maintenance and who live without employment, and all persons wandering abroad and living in taverns, groceries, beer houses, market places, sheds, barns, or in open air, and not giving a good account of themselves, and all persons wandering about and begging, or who go about from door to door, or from place to place, or occupy public places for the purpose of begging and receiving alms, and all prostitutes, and all keepers, occupants, lessees, tenants and pimps of houses used for prostitution or gambling, shall be deemed and are hereby declared to be vagrants; and upon conviction thereof, shall be fined not exceeding fifty dollars, or imprisoned in the jail of the county not exceeding three months, and be subject to hard labor in said jail or elsewhere in the county, as the court may order; *Provided*, That any person so convicted, who shall be disqualified for manual labor by physical inability, and shall be a proper object for relief, shall be sent to the alms house of the proper city or county, or otherwise cared for, according to law. [Amended 1875, 15.]

**Sec. 242 a. [Tramp defined.]**—**Sec. 1.** Any person going about from place to place and asking or subsisting on charity, shall be taken and deemed to be a tramp. [1879 § 1, 64.]

**Sec. 242 b. [Begging by tramp.]**—**Sec. 2.** Any tramp who shall ask and receive from any person of any precinct, town, village, or city within this state any food, clothing, lodging, or other assistance, may be requested by such person, in his or her discretion, to perform a reasonable amount of labor therefor, and any

**Sec. 241.** A contract entered into on Sunday is not void for that reason. 5 Neb. 358.

**Sec. 242.** The original section was: "If any person of the age of fourteen years and upward, shall profanely curse or damn, or profanely swear by the name of God, Jesus Christ or the Holy Ghost; each and every person so offending shall be fined in a sum not exceeding one dollar nor less than twenty-five cents for each offense."

**Sec. 242 a-g.** "An act relating to and to punish tramps." Laws 1879, 64.

such tramp who shall refuse to perform any such labor when so requested shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than three dollars or more than twenty dollars and cost of prosecution, and shall stand committed until the same is paid, but not exceeding one day for each dollar of fine; or may be imprisoned in the county jail, at hard labor, not less than three days nor more than twenty days, in the discretion of the court; but no such tramp shall be required to perform any such labor before six o'clock in the morning, or after six o'clock in the evening.

SEC. 242 c. [**Torts by tramps.**].—SEC. 3. Any tramp who shall wilfully and maliciously do any injury to any person, or to the property, real or personal, of any person, or who shall procure food, clothing or other property from any person by threats, or by force, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by confinement, at hard labor, in the state prison for a term not exceeding three years, and not less than one year.

SEC. 242 d. [**Excepted persons.**].—SEC. 4. This act shall not apply to any minor under the age of sixteen years nor to any female, nor any blind person.

SEC. 242 e. [**Prosecutions, where had.**].—SEC. 5. All prosecutions for any of the offenses described in section two of this act may be tried and determined by the county judge, any justice of the peace or magistrate of the county in which the offense is committed, or, if in the limits of any city, town, or village, by the police court of said city, town, or village, and any court before whom such prosecution is tried may sentence the offender to pay a fine not exceeding twenty dollars, and may issue his warrant to carry such judgment into effect in case no appeal is taken.

SEC. 242 f. [**Arrests without warrant—Officer's duties.**].—SEC. 6. Whenever any tramp in this state shall have committed any offense described in this act, any sheriff, deputy sheriff, constable, city marshal, or policeman of the county, precinct, town, or city in which such offense is committed may, without warrant, and it is hereby made their duty, to apprehend such person and retain him in custody, at the expense of the county, city, town, or village in any place within the county, and to prepare and file with the proper magistrate or court his complaint against such offender, and it shall be the duty of the officer making the arrest to forthwith file with the proper magistrate, or court, his complaint against such offender, and to prosecute the same.

SEC. 242 g. [**Costs of prosecution.**].—SEC. 7. In all prosecutions before a justice of the peace, or police court, for violations of the provisions of section two of this act, the costs of prosecution shall be paid out of the county, city, town, or village treasury.

SEC. 243. [**Unlicensed puppet show.**].—If any person or persons shall exhibit any puppet-show, wire-dancing, or tumbling, juggling or sleight of hand, within this state, without first obtaining license as may be required by law, or by municipal ordinance, and shall ask and receive any money or other property for exhibiting the same; every person so offending shall forfeit and pay for every such offense, the sum of ten dollars.

SEC. 244. [**Disinterring dead bodies.**].—If any person or persons shall open the grave or tomb where the body or bodies of any deceased person or persons shall have been deposited, and shall remove the body or bodies, or remains of any deceased person or persons, from the grave or place of sepulture, for the purpose of dissection, or any surgical, or any anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, or shall in any way aid, assist, counsel or procure the same to be done; every such person or persons so offending, shall, on conviction, be fined not less than one hundred dollars nor more than five hundred dollars.

SEC. 245. [**Same.**].—The preceding section shall not extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose by competent authority, nor shall it be so construed as to prevent

any person from removing the body or bodies of their deceased relations or intimate friends, to any other place of sepulture that he or she may think proper.

SEC. 245. *a.* [**Three card monte.**].—SEC. 1. Whoever shall, in this state, deal, play, and practice, or be in any manner accessory to the dealing, playing, or practicing of the confidence game or swindle, known as three card monte, or of any such game, play, or practice, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding five thousand dollars, and by confinement in the penitentiary not less than two nor more than five years. [1875 § 1, 21.]

SEC. 245. *b.* [**Prize packages.**].—SEC. 2. Whoever shall in this state, on any railroad car, coach, or train, practice any confidence game not mentioned in the preceding section, or shall sell any prize packages, or other prize, or offer the same for sale, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three months.

SEC. 245. *c.* [**Duties of conductor and brakemen.**].—SEC. 3. It is hereby made the duty of railroad conductors, brakemen on railroad trains, and of all other persons cognizant of the act, to immediately arrest the person so offending, without warrant or other process, and call upon all bystanders or others for assistance, when the same may be necessary to enable them to make such arrests; and when such offense is committed on any railroad car, coach, or train, the venue shall lie, and the person be tried in any county through which such railroad may run, any law to the contrary notwithstanding; and the employees of any such railroad company shall have the power and authority to eject any such person or persons by force from the cars of such company whenever such person or persons shall be found practicing or attempting to practice any such game therein.

SEC. 245. *d.* [**Crime against nature.**].—SEC. 1. That the infamous crime against nature either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and may [may] extend to life. [1875 § 1, 26.]

## PART II.—CRIMINAL PROCEDURE.

### CHAPTER XXIV.—DEFINITIONS AND GENERAL PROVISIONS.

SEC. 246. [**Tense—Gender—Number—Writing—Oath.**].—Unless when otherwise provided, words used in this code in the present tense, include the future as well as the present. Words used in the masculine gender comprehend as well the feminine and neuter. The singular number includes the plural, and the plural the singular. The term "writing" includes printing. The term "oath" includes an affirmation.

SEC. 247. [**Felony—Misdemeanor.**].—The term "felony" signifies such an offense as may be punished with death or imprisonment in the penitentiary. Any other offense is denominated a misdemeanor.

SEC. 248. [**Magistrates.**].—The term "magistrate" in this code, when not otherwise expressly stated, is used to mean a justice of the peace, probate judge, mayor of a city, or incorporated village, or police judge.

SEC. 249. [**Prosecuting attorney.**].—The term "prosecuting attorney" signifies the same as district attorney.

SEC. 250. [**Construction of code.**].—In the construction of this code each general provision shall be controlled by a special provision on the same subject, if there be a conflict.

SEC. 245, *a. b. c.* "An act for the punishment of players of three card monte and other confidence games and of persons for selling on railroad trains prize packages, and other prizes, or offering the same for sale." Laws 1875, 21.

SEC. 245. *d.* Being section 1 of "an act defining certain crimes and providing punishment therefor." Laws 1875, 26.

SEC. 251. [**Same.**]—This code and every other law upon the subject of crime which may be enacted, shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects, and no person shall be punished for an offense which is not made penal by the plain import of the words, upon pretense that he has offended against his spirit.

SEC. 252. [**Person—General term.**]—Whenever any property or interest is intended to be protected by a provision of the penal law, and the general term "person," or any other general term, is used to designate the party whose property is intended to be protected, the provisions of such penal laws and the protection thereby given, shall extend to the property of the state, or of any county, and of all public or private corporations.

SEC. 253. [**Signature.**]—The word "signature" includes the mark of a person unable to write his name; a mark shall have the same effect as a signature, when the name is written by some other person and the mark is made near thereto by the person unable to write his name.

SEC. 254. [**Terms not defined, how taken.**]—Except where a word, term, or phrase is specially defined all words used in this code are to be taken and construed, in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed. The titles merely, to the various chapters, sections or clauses of this act, which are written or printed upon the bill at the time of its passage, shall constitute no part of this act of the legislature.

SEC. 255. [**Existing laws saved.**]—No offense committed, and no fine, forfeiture or penalty incurred under existing laws previous to the taking effect of this code, shall be effected by the repeal herein of any such existing laws, but the punishment of such offenses, the recovery of such fines and forfeitures shall take place as if said laws repealed had remained in force; *Provided*, That the manner of procedure for the enforcement or imposition of all such punishments, and the collection of all such fines and forfeitures, shall be in accordance, or as nearly in accordance with the provisions of this code as the nature of the case will admit; and in any case whatsoever, should the procedure provided for in this code be wholly inadequate, the procedure provided for in the laws repealed by this code may be followed so far as necessary to prevent a failure of justice.

SEC. 256. [**Limitation of prosecutions.**]—No person or persons shall be prosecuted for any felony, (treason, murder, arson and forgery excepted), unless the indictment for the same shall be found by a grand jury, within three years next after the offense shall have been done or committed. Nor shall any person be prosecuted, tried or punished for any misdemeanor or other indictable offense below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information or action for the same, shall be found or instituted within one year and six months from the time of committing the offense or incurring the fine or forfeiture, or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars, and to imprisonment not exceeding three months; *Provided*, That nothing herein contained shall extend to any person fleeing from justice; *Provided, also*, That where any suit, information or indictment, for any crime or misdemeanor, is limited by any statute to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited, by such statute; *And provided, also*, That where any indictment, information or suit shall be quashed, or the proceedings in the same set aside or reversed, on writ of error, the time during the pendency of such indictment, information or suit so quashed, set aside or reversed, shall not be reckoned within this statute, so as to bar any new indictment, information or suit for the same offense.

SEC. 257. [**Manner of prosecutions.**]—All fines and punishments pro-



vided in this code, shall be enforced by the procedure provided for in this code, so far as such procedure extends or can be made applicable.

SEC. 258. [**Criminals disqualified as electors, etc.**].—Any person sentenced to be punished for any felony (when sentence shall not have been reversed or annulled), shall be deemed incompetent to be an elector or juror, or to hold any office of honor, trust or profit within this state, unless said convict shall receive from the governor of this state a general pardon, under his hand and the seal of the state, in which case said convict shall be restored to his civil rights and privileges; *Provided, however*, That such pardon shall not release such convict from the costs of his conviction.

SEC. 259. [**Same.**].—Any person who shall have been actually imprisoned in the penitentiary of any other state or territory of this union, under sentence for the commission of any crime which, by the laws of this state, is punishable by imprisonment in the penitentiary, shall be deemed incompetent to be an elector or juror, or to hold any office of honor, trust or profit within this state, unless said convict shall have received a general pardon from the governor of the state in which he may have been imprisoned, agreeably to the laws thereof.

## CHAPTER XXV.—POWERS AND DUTIES OF CERTAIN OFFICERS.

SEC. 260. [**Jurisdiction of magistrates.**].—All justices of the peace, mayors, police judges, and probate judges, in this state shall have the same and equal powers of jurisdiction in all matters relating to the enforcement of the criminal laws of the state, except as otherwise expressly provided, and the jurisdiction of all such officers as magistrates above named for the discharge of the duties and for the exercise of the powers enjoined and conferred by this code, shall extend to all crimes and offenses punishable by the laws of this state, committed within the counties where each of said officers respectively resides and legally holds his office, and also for the prevention of crimes and offenses as in this code provided, throughout their respective counties.

SEC. 261. [**Mayor.**].—In cities in which there is a police judge, the mayor shall not, except in cases of urgency or necessity, be required to hear or examine into any criminal charge or case, and any warrants issued by the mayor of such city shall be returnable before the judge of the police court.

SEC. 262. [**Conservators of the peace.**].—The judges of the district courts in their respective districts, and the magistrates mentioned in section two hundred and sixty, in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions, and shall have full power to enforce or cause to be enforced, all laws that now exist or that shall hereafter be made for the prevention and punishment of offenses, or for the preservation and observance of the peace. The said judges of the district courts shall have the same powers to require securities for the keeping of the peace, and the good behavior, and bail for appearance in courts to answer complaints to keep the peace, and for crimes and offenses committed in their respective districts as any of the magistrates aforesaid have in their respective counties. [Amended 1875, 16.]

SEC. 263. [**Constables.**].—Constables shall be ministerial officers of the courts holden by justices of the peace in criminal cases, within their respective counties. And it shall be their duty to apprehend and bring to justice felons and disturbers of the peace, and to suppress riots and to keep and preserve the peace within their respective counties. They shall have power, and they are hereby authorized to execute all writs and process in criminal cases throughout the county in which they may reside and where they were elected or appointed.

SEC. 264. [**Same—Sheriffs—Fugitives—Compensation.**].—If any person or persons, who may be charged with the commission of a crime or offense made punishable by the laws of this state, shall abscond or remove from

the county in which such crime or offense be charged to have been committed, it shall be lawful for any sheriff, constable, or other person to apprehend the person or persons so charged, and forthwith remove him, her, or them to the county in which the alleged crime may be said to have been committed, and deliver such person or persons to any magistrate in said county, who shall cause the person or persons so delivered to be dealt with as the law may direct.

**SEC. 265. [City and village marshals.]**—Every city, town or village marshal, lawfully holding such office, shall be the appropriate ministerial officer of the police court or mayor's court of the city or town, or incorporated village, and as such shall have all the powers and be charged with all the duties of constables in the making of arrests, serving process, and preserving the peace, as prescribed in the last two preceding sections in criminal matters.

**SEC. 266. [Special constables.]**—That it shall be lawful for any justice of the peace within this state, upon the written application of any three freeholders of any township thereof, to appoint one or more special constables within such township, whose duty it shall be to watch and guard the property of said freeholders, and to protect the same from all unlawful acts, and in the discharge of their duty they shall have authority to make arrests. The justice making such appointment shall make a memorandum thereof upon his docket, and the same shall continue in force for one year, unless sooner revoked by such justice. The constables appointed by virtue of this section, shall be paid in full for their services by the freeholders for whose benefit they are appointed, and shall receive no compensation except from said freeholders.

#### CHAPTER XXVI.—PROCEDURE TO PREVENT CRIMES AND OFFENSES.

**SEC. 267. [Complaint to keep the peace.]**—Whenever any person shall make complaint in writing, upon oath, before any justice of the peace, mayor or of any city or incorporated village, police judge, or probate judge, that he has just cause to fear, and does fear, that another will commit any offense against the person or property of himself, his ward, or child, it shall be the duty of the magistrate before whom such complaint is made, to issue a warrant in the name of the state to any constable of the county, commanding him forthwith to arrest the person complained of, and him to take before such magistrate, or any other magistrate named in this section, of the same county, to answer such complaint.

**SEC. 268. [Examination—Recognizance.]**—When the party complained of shall be brought before the magistrate, he shall be heard in his defense, and all witnesses produced shall be examined upon oath, and if, upon such examination, the magistrate shall be of the opinion there is just cause for the complaint, he shall order the person complained of to enter into recognizance, with good and sufficient security, in any sum not less than fifty dollars nor more than one thousand dollars, for his appearance before the district court, on the first day of the next term thereof, or forthwith, if it be term time of said court, and in the mean time that he shall keep the peace, and be of good behavior generally, and especially toward the person complaining.

**SEC. 269. [Commitment, in default of recognizance.]**—In default of such recognizance and security, as provided in the preceding section, the magistrate shall commit the person complained of to the jail of the county, there to remain until discharged by due course of law.

**SEC. 270. [Accused discharged—Costs against complainant.]**—But if the magistrate, on the examination, shall be satisfied that there is no just cause for the complaint, it shall be his duty to discharge the accused, and render judgment, in the name of the state, against the party complaining, for the costs of the prosecution and the same shall be collected by execution, as in civil cases.

SEC. 267. A complaint by a wife that she "has just cause to fear," etc., that another will commit an offense on the person of her husband is insufficient. 10 Neb. 588.

SEC. 270. Judgment for costs, in a complaint by A against B, against husband of A is void. Judgment can only be entered under this section for "costs of prosecution." 10 Neb. 587.

SEC. 271. [**Recognizance of witnesses.**].—In case the defendant is recognized or committed as aforesaid, the magistrate shall require the material witnesses in the case to enter into recognizance to appear in court, as described in sections three hundred and three, three hundred and four, [and] three hundred and five. [Amended 1875, 17.]

SEC. 272. [**Recognizance returned.**].—All recognizances authorized to be taken as aforesaid, either in term time or vacation of that court to which the same may be returnable, shall be delivered or transmitted by the magistrate taking the same to the clerk of such court, without unnecessary delay, and before the commencement of the term of the court next thereafter to be holden, if such recognizance be taken in vacation; but if the same be taken in term time, then it shall be returned forthwith.

SEC. 273. [**Magistrate may require security without process.**].—Every person who, in the presence of any magistrate specified in the first section, shall make an affray or threaten to kill or beat another, or to commit any offense against the person or property of another, and every person who, in the presence of such officer, shall contend with hot and angry words, to the disturbance of the peace, may be ordered without process, or any other proof, to give such security as above specified in this title, and, in case of failure, or refusal, he may be committed in like manner as above specified.

SEC. 274. [**Examination.**].—The district court to which any transcript or recognizance to keep the peace, as aforesaid, shall be returned, shall, upon the appearance of the parties complaining and complained of, examine the witnesses produced upon oath, and may either discharge the accused from his recognizance or commitment, or may order him to enter into such other and further security as may be just, thereafter to keep the peace and be of good behavior for such term of time as the court may order.

SEC. 275. [**Commitment.**].—For want of such security the court shall commit the person accused to the jail of the county, there to remain until such order be complied with, or he be otherwise discharged by due course of law; but in no case shall a person so failing to give security be confined for a period of time exceeding one year.

SEC. 276. [**Costs.**].—Whether such person be held to bail or be committed for want thereof, the court shall, in either case, render judgment against him for the costs of the prosecution and award execution therefor.

SEC. 277. [**Failure to prosecute.**].—When any person shall have been recognized to the court to keep the peace as aforesaid, and the complainant shall fail to prosecute his complaint, the party recognized shall be discharged unless good cause to the contrary be shown.

SEC. 278. [**Costs.**].—If the district court shall discharge the person accused on examination of the complaint, or because the complainant has failed to appear, said court may in its discretion, render judgment against the person complaining for the costs of prosecution, and award execution therefor.

SEC. 279. [**Preventing prize fight.**].—If, at any time, the sheriff of any county, constable or marshal, or other police officer of any city or incorporated village, shall have reason to believe that any person in his bailiwick is about to engage as principal in any fight or contention described in section seven of this code, or is in preparation or training to engage as principal in any fight or contention, he shall forthwith arrest such person and conduct him before any judge of the district court, or a magistrate in his county, and upon the proper affidavit being filed, prosecute the complaint; and thereupon the judge or magistrate shall inquire into the truth of said charge, and if he shall find it true, he shall require the accused to enter into a recognizance, with sufficient sureties, residents of this state, to be approved by such judge or magistrate, in a sum not less than five hundred nor more than ten thousand dollars, conditioned that the accused will not engage in any such fight or contention within the period of one year from and after the date of such arrest, and in default of such recognizance, such judge,

justice, or mayor shall commit the party accused to the jail of the county, there to remain until he gives such recognizance, with sureties; *Provided*, That if, after the expiration of one month, the person so confined is unable to enter into such recognizance, the probate judge of the proper county may discharge such person on his own recognizance, in the same amount and with the same conditions, on proof satisfactory to such judge, by the affidavit of the accused, and other evidence, that the person so confined will not engage or be concerned in any such fight or contention within the time limited in said recognizance.

SEC. 280. [**Same—Recognizance.**]—Every such recognizance or affidavit taken shall be by such judge or magistrate certified to the district court of the proper county, where the same shall be recorded; and any district attorney who shall receive information, or have reason to believe, that the condition of any such recognizance has been broken, shall immediately bring suit thereon in any county of this state, collect the amount due thereon, and pay the same into the treasury of the proper county.

SEC. 281. [**Same.**]—If any sheriff shall have information and reason to believe that such fight or contention as is described in section seven of this code, is about to take place in his county, he shall forthwith summon a force of citizens of the county sufficient for the purpose, and suppress such fight or contention, and arrest all persons present thereat who may be found violating any of the provisions of section seven or section eight of this act, and take them before some judge of the district court, or a magistrate, to be dealt with as provided by law.

SEC. 282. [**Same—Costs and expenses, how paid.**]—All the expenses of carrying into effect the provisions of the last three preceding sections, shall, in the first instance, be paid out of the county treasury, on a certificate of a judge of the court or magistrate before whom such examination shall be had; and such court or magistrate shall proceed, upon finding such charge true, to collect from the person or persons against whom said complaint was found true, all the costs in said proceedings, to be taxed as in other criminal proceedings, in the manner provided by law for collecting fines and costs in criminal cases, and shall pay the same when collected, into the treasury of the proper county.

#### CHAPTER XXVII.—ARREST AND ARRAIGNMENT BEFORE MAGISTRATES.

SEC. 283. [**Arrest by officer.**]—Every sheriff, deputy sheriff, constable, marshal, or deputy marshal, watchman or police officer shall arrest and detain any person found violating any law of this state, or any legal ordinance of any city or incorporated village, until a legal warrant can be obtained.

SEC. 284. [**Arrest by private person.**]—Any person not an officer may, without warrant, arrest any person, if a petit larceny or a felony has been committed, and there has been reasonable ground to believe the person arrested guilty of such offense, and may detain him until a legal warrant can be obtained.

SEC. 285. [**Warrant—Issuance.**]—Justices of the peace, mayors of cities and villages, police judges and probate judges shall have power to issue process for the apprehension of any person charged with a criminal offense.

SEC. 286. [**Same.**]—Whenever a complaint in writing and upon oath, signed by the complainant, shall be filed with the magistrate, charging any person with the commission of an offense against the laws of this state, it shall be the duty of such magistrate to issue a warrant for the arrest of the person accused, if he shall have reasonable grounds to believe that the offense charged has been committed.

SEC. 287. [**Security for costs.**]—When the offense charged is a misdemeanor, the magistrate, before issuing the warrant, may, at his discretion, require the complainant to acknowledge himself responsible for costs in case the complaint shall be dismissed, which acknowledgment of security for costs shall be entered on the docket, and the magistrate on dismissal may, if in his opinion the com-

SEC. 288. A discharge by one magistrate, on preliminary examination, is no bar to proceedings before another. 10 Neb. 80.

plaint was without probable cause, enter a judgment against such complainant for costs made thereon. And in case said magistrate shall consider such complainant wholly irresponsible, such magistrate may, in his discretion, refuse to issue any warrant unless the complainant procure some responsible security to the satisfaction of such magistrate for said costs in case of such dismissal, and said security shall acknowledge himself so bound, and the magistrate shall enter it on his docket.

SEC. 288. [**Warrant—Contents—Direction.**].—The warrant shall be directed to the sheriff or to any constable of the county, or if the same be issued by an officer of a municipal corporation authorized to issue such warrant, then to the marshal or other police officer of such corporation, and reciting the substance of the accusation, shall command the officer forthwith to take the accused, and bring him before the magistrate or court issuing the warrant, or some other magistrate having cognizance of the case, to be dealt with according to law; and no seal shall be necessary to the validity of the warrant.

SEC. 289. [**Same—Execution.**].—The magistrate issuing any such warrant, may make an order thereon authorizing a person to be named in such warrant to execute the same; and the person named in such order may execute such warrant anywhere in the state, by apprehending and conveying such offender before the magistrate issuing such warrant, or before some other magistrate of the same county; and all sheriffs, coroners, and constables, and others, when required, in their respective counties, shall aid and assist in the execution of such warrant.

SEC. 290. [**Pursuit by officer.**].—If any person charged as aforesaid with the commission of an offense shall flee from justice, it shall be lawful for the officer in whose hands the warrant for such person has been placed, to pursue and arrest such person in any other county in this state, and him to convey before the magistrate issuing the warrant, or any other magistrate having cognizance of the case, of the county where such offense was committed.

SEC. 291. [**Persons charged absconding.**].—If any person charged with an offense shall abscond or remove from the county in which such offense is alleged to have been committed, it shall be lawful for any magistrate of the county in which such person may be found to issue a warrant for the arrest and removal of such person to the county, in which the offense is alleged to have been committed, to be there delivered to any magistrate of such county, who shall cause the person so delivered to be dealt with according to law, and the warrant so issued shall have the same force and effect as if issued from the county in which such offense is alleged to have been committed.

SEC. 292. [**Prisoner detained in jail.**].—Any officer or other person having in lawful custody any person accused of an offense, for the purpose of bringing him before the proper magistrate or court, may place and detain such prisoner in any county jail of this state, for one night or longer, as the occasion may require, so as to answer the purposes of the arrest and custody.

SEC. 293. [**Officer may break doors and windows.**].—In executing a warrant, for the arrest of a person charged with an offense, or a search warrant, the officer may break open any outer or inner door or window of a dwelling-house or other building, if, after notice of his office and purpose, he be refused admittance. But this section is not intended to authorize any officer executing a search warrant to enter any house or building not described in the warrant.

SEC. 294. [**Arrested person brought before magistrate.**].—Whenever any person has been arrested under a warrant as provided in the preceding sections of this chapter, it shall be the duty of the officer making the arrest, to take the person so arrested before the proper magistrate; and the warrant by virtue of which the arrest was made, with a proper return endorsed thereon and signed by the officer, shall be delivered to such magistrate.

SEC. 295. [**Arrest on view.**].—When any offense is committed in view of any magistrate, he may, by verbal direction to any sheriff or constable, or marshal or other proper officer, or, if no such officer be present, then to any citizen,

cause the offender to be arrested and kept in custody for the space of one hour, unless he shall sooner be taken from such custody, by virtue of a warrant issued on complaint under oath; but a person so arrested shall not be confined in jail nor put upon trial until arrested by virtue of such a warrant.

**SEC. 296. [Rewards by county.]**—The county commissioners of the several counties in this state are hereby authorized, when they deem the same expedient, to offer such rewards as in their judgment the nature of the case may require, for the detection or apprehension of any person charged with or convicted of a felony, and pay the same on the conviction of such person, together with all necessary expenses not otherwise provided for by law, incurred in making such detection or apprehension, out of the county treasury.

**SEC. 296 a. [Rewards for capture of horse thieves.]**—**SEC. 1.** That the sheriffs of the several counties within this state are hereby authorized to offer and pay a reward not exceeding the sum of fifty dollars for the capture and conviction of any person charged with stealing a horse or horses within their respective counties, and the county commissioners of such counties shall audit the accounts of such sheriffs for money paid out as such rewards, together with all necessary expenses incurred in the apprehension and detention of any such horse thief, and pay the same out of the treasury of their county. [1879, 181.]

#### CHAPTER XXVIII.—ADJOURNMENT AND EXAMINATION BEFORE A MAGISTRATE.

**SEC. 297. [Commitment pending adjournment.]**—If it shall become necessary for any just cause to adjourn the examination of any person brought before the magistrate as set forth in the preceding chapter, it shall be lawful for such magistrate to adjourn such examination and commit such person, from time to time, for safe keeping, to the jail of the county, until the cause of delay be removed, and no longer; *Provided*, The whole time of such confinement in the jail shall not exceed four days; *Provided, also*, That the officer having in custody any such person, may, by the written order of the magistrate, detain such person in custody in some secure and convenient place other than the jail, to be designated by said magistrate in his order, not exceeding four days. And it shall be the duty of the officer in whose custody any person shall be detained as above, to provide for the sustenance of such prisoner while in custody.

**SEC. 298. [Same—Recognizance.]**—When it shall become necessary to adjourn any trial according to the provisions of the preceding section, the person accused may enter into a recognizance before the magistrate, with good and sufficient security to be approved by the magistrate, in such amount as he shall deem reasonable, conditioned for the appearance of such person before said magistrate, at a place and day and hour in said recognizance specified; *Provided*, That such adjournment shall not be for a longer time than twenty days without the consent of the accused; *And provided*, That no person shall be let to bail who is charged with an offense not bailable under the constitution of this state.

**SEC. 299. [Recognizance forfeited.]**—If any person recognized, agreeably to the last preceding section, shall fail to appear at the time appointed, or shall otherwise fail to comply with the conditions of the recognizance, the magistrate shall declare the same forfeited, and transmit a transcript of his proceeding in the case, together with the recognizance, to the clerk of the proper court; and such proceedings shall be had thereon by said court as shall be deemed expedient, and as if the recognizance had been taken in said court.

**SEC. 300. [Charge exceeding jurisdiction.]**—When the complaint is for a felony, or for an offense for which the fine can exceed one hundred dollars, or the imprisonment can exceed three months, upon the accused being brought before the magistrate he shall proceed as soon as may be, in presence of the accused, to inquire into the complaint.

SEC. 296 a. "An act to authorize sheriffs to offer rewards for the capture of horse thieves and to provide for the payment of the same," passed Feb. 27. Took effect June 1, 1879. Laws 1879, 131.

**SEC. 301. [Witnesses—Separate examination.]**—The magistrate, if requested, or if he sees good cause therefor, shall order that the witnesses on both sides shall be examined each one separate from all the others, and that the witnesses for may be kept separate from the witnesses against the accused during the examination.

**SEC. 302. [Accused discharged.]**—If, upon the whole examination, it appears that there has been no offense committed, or that there is not probable cause for holding the prisoner to answer the offense, he shall be discharged.

**SEC. 303. [Recognizance of witness.]**—If it shall appear that an offense has been committed, and there is probable cause to believe the prisoner guilty, the magistrate shall bind by recognizance such witnesses against the prisoner as he shall deem necessary, to appear and testify before the court having cognizance of the offense, on the first day of the next term thereof, and not to depart from such court without leave. If the court is in session, they shall be recognized to appear forthwith, but no recognizance requiring such witnesses to appear at the next term shall be invalid from the fact that the court is in session.

**SEC. 304. [Same.]**—When the magistrate is satisfied that there is reason to believe that any such witness will not perform the condition of his own recognizance, he may, when the offense charged is a felony, order him to recognize with sufficient securities. Any person may recognize for a married woman or a minor to appear as a witness, or the magistrate may take the recognizance of either in a sum not exceeding one hundred dollars, which shall be valid notwithstanding the disability of coverture or minority.

**SEC. 305. [Same—Refusal.]**—If any witness so required to enter into a recognizance, refuse to comply with such order, the magistrate shall commit him or her to jail until he or she comply with such order, or be otherwise discharged according to law.

**SEC. 306. [Docket—Transcript.]**—It shall be the duty of every magistrate in criminal proceedings, to keep a docket thereof as in civil cases. All recognizances taken under this title, together with a transcript of the proceedings, where the defendant is held to answer, shall be certified and returned forthwith to the clerk of the court at which the prisoner is to appear. The transcript shall contain an accurate bill of all the costs that have accrued, and the items composing the same.

**SEC. 307. [Recognizance of defendant.]**—If the offense for which the prisoner is held to answer be bailable, and the prisoner offer sufficient bail, a recognizance shall be taken for his appearance to answer the charge before the court in which the same is cognizable on the first day of the next term thereof, and not to depart such court without leave, and thereupon he shall be discharged.

**SEC. 308. [Same—Court in session.]**—If the court to which the accused is recognized to appear is in session, the condition of the recognizance shall be that he shall appear at such court forthwith, and not depart therefrom without leave; but no recognizance requiring the accused to appear at the next term, shall be rendered invalid by the fact that the court is in session.

**SEC. 309. [Crime higher than charged.]**—If on the examination it shall appear to the magistrate that the accused has committed an offense of a higher grade than that charged, he may be held to answer therefor.

**SEC. 310. [Commitment—Want of bail.]**—If the offense be not bailable, or sufficient bail be not offered, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law.

**SEC. 311. [Mittimus.]**—It shall be the duty of the magistrate who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offense is not by law bailable,

to write on the warrant of commitment the names and residences of the principal witnesses by whom the crime was proved before said magistrate.

SEC. 312. [**Copy mittimus—List of witnesses.**—Whenever any prisoner in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer a copy of said warrant of commitment, said sheriff or jailer shall endorse on said copy the names of the witnesses written thereon as aforesaid; and any magistrate who shall neglect to write the name or names of the witnesses aforesaid on the warrant of commitment, or any sheriff or jailer who shall neglect to indorse the name of said witness or witnesses on a copy of said commitment, each magistrate, sheriff, or jailer offending in the premises shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name and for the use of any person who shall sue for the same in any court of record.

SEC. 313. [**Pleading guilty of misdemeanor before county judge.**—When the complaint is for a misdemeanor only, of any grade of punishment whatever, if the cause is pending before the probate judge of the county, before whom the defendant enters a plea of guilty to the complaint, it shall be lawful for such judge, in his discretion, to render judgment of fine or imprisonment, or both, according to the law of the case, and pass sentence accordingly, and enforce the same according to law.

#### CHAPTER XXIX.—TRIAL OF MINOR OFFENSES BEFORE MAGISTRATES.

SEC. 314. [**Jurisdiction.**—Magistrates shall have jurisdiction concurrent with the district court and co-extensive with their respective counties, in all cases of misdemeanor, in which the fine cannot exceed one hundred dollars and the imprisonment cannot exceed three months, except as otherwise provided by law.

SEC. 315. [**Plea.**—In all cases where the magistrate shall have jurisdiction to try and sentence or finally discharge, as described in the preceding section, the charge made against the defendant shall be distinctly read to him, and he shall be required to plead thereto, which plea the magistrate shall enter upon his docket. If the defendant refuse to plead, the magistrate shall enter the fact, with a plea of "not guilty" in his behalf.

SEC. 316. [**Jury—Waiver.**—After the plea of the defendant has been entered, if he plead not guilty, the defendant, or complainant; or the district attorney, if he be present, may demand a jury; but if no jury be demanded, the cause may be tried by the magistrate.

SEC. 317. [**Jury, how drawn.**—If a jury be demanded, the magistrate shall make a list in writing of the names of eighteen inhabitants of the county, qualified to serve as jurors in courts of record, from which list the defendant and the district attorney, or complainant, shall strike out names alternately until each shall have struck six names, the defendant striking out the first name.

SEC. 318. [**Same—By magistrate.**—In case the defendant or the district attorney or complainant shall neglect to strike out such names, the magistrate shall proceed to strike out the names for either, or both the parties so neglecting, and the magistrate shall issue a venire directed to the sheriff, or any constable of the county, requiring him to summons the six persons whose names shall remain upon the list, to appear before such magistrate at a time and place to be named therein, to serve as jurors for the trial of such cause.

SEC. 319. [**Jury less than six.**—If the defendant consent, the cause may be tried before a jury of any number of men more than two and less than six, to be selected from a list of double the number so agreed upon, of qualified inhabitants of the county, as provided in the last preceding section, each party striking out names from the list alternately, until the number so agreed upon shall remain, the defendant striking out the first name.

SEC. 320. [**Service of venire—Talesmen—New jury.**—The venire



shall be served personally upon the jurors, and returned within the time therein specified. If any of the jurors named in such venire shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the magistrate shall supply the deficiency by directing the sheriff or constable, or other ministerial officer who may be present, and disinterested, to summon any of the bystanders, or others who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause. The magistrate may compel any delinquent juror to attend by attachment. If the officer to whom the venire for a jury shall have been delivered, shall fail to return the same as thereby required, or if the jury shall fail to agree, and be discharged by the magistrate, a new jury shall be selected and summoned, in the same manner, and the same proceedings shall thereupon be had as herein prescribed in respect to the first jury, unless the defendant shall consent to be tried by the magistrate, in which case the magistrate shall proceed to try the case as if no jury had been demanded.

**SEC. 321. [Jurors challenged.]**—In all trials for misdemeanors before a magistrate, either party may challenge jurors for cause to the same extent as in trials for like offenses in the district court.

**SEC. 322. [Costs of prosecution.]**—Whenever the defendant shall be tried under the provisions of this chapter, and found guilty either by the magistrate or jury, or shall enter a plea of guilty, the court shall render judgment thereon, assessing such punishment either by fine, or imprisonment or both, as the nature of the case may require, and the law permit; in such case the defendant shall, in addition to the fine or imprisonment, be adjudged to pay the costs, and to be committed to the county jail until the judgment be complied with. Whenever the defendant, tried under the provisions of this chapter, shall be acquitted, he shall be immediately discharged, and if the magistrate or jury trying the case shall state in the finding that the complaint was malicious or without probable cause, the magistrate shall enter judgment against the complainant, for all costs that shall have accrued in the proceedings had upon such complaint, and shall commit such complainant to jail until such costs be paid, unless he shall execute a bond to the people of the state of Nebraska in double the amount thereof, with security satisfactory to the justice, that he will pay such judgment within thirty days after the date of its rendition.

**SEC. 323. [Executions.]**—The judgment of the magistrate shall be carried into effect as provided in chapter forty-nine. Prosecutions under this twenty-ninth chapter, shall be governed by the provisions of this criminal code, so far as the same are in their nature applicable.

**SEC. 324. [Appeal.]**—The defendant shall have the right of appeal from any judgment of a magistrate, imposing fine or imprisonment, or both, under this chapter, to the district court of the county, which appeal shall be taken immediately upon the rendition of such judgment, and shall stay all further proceedings upon such judgment. No appeal shall be granted or proceedings stayed unless the appellant shall within twenty-four hours after the rendition of such judgment, enter into a recognizance to the people of the state of Nebraska, in a sum not less than one hundred dollars, and with sureties to be fixed and approved by the magistrate before whom said proceedings were had, conditioned for his appearance at the district court of the county at the next term thereof, to answer the complaint against him. The magistrate from whose judgment the appeal is taken, shall make return of the proceedings had before him, and shall certify the complaint and warrant together with all recognizances to said district court, on or before the first day of the term thereof, next thereafter to be holden in the county, and he may also require the complainant and witnesses to enter into recognizances, with or without security, as he may deem best, to appear at said court at the time last aforesaid, and abide the order of said court, and in case of refusal to enter into such recognizance, he may enforce the same by imprisonment, if necessary.

SEC. 925. [**Same—Proceedings in district court.**—The district court shall hear and determine any cause under this act, brought by appeal from a magistrate, upon the original complaint, unless such complaint shall be found insufficient or defective, in which event the court, at any stage of the proceedings, shall order a new complaint to be filed therein, and the case shall proceed thereon the same in all respects as if the original complaint had not been set aside.

SEC. 926. [**Conviction—Judgment.**—If, upon a trial in the district court the defendant shall be convicted, the court shall assess the punishment and judgment shall be rendered against him accordingly, and for the costs before the magistrate, also for the costs in such court, and that he be committed to the county jail until the judgment be complied with.

SEC. 927. [**Trial changed to examination.**—If in the progress of any trial before a magistrate, under the provisions of this chapter, it shall appear that the defendant ought to be put upon his trial for an offense not cognizable before a magistrate, the magistrate shall immediately stop all further proceedings before him, and proceed as in other criminal cases, exclusively cognizable before the district court.

SEC. 928. [**Conviction certified to county clerk.**—Whenever conviction shall be had before a magistrate under this chapter, he shall make a certificate of such conviction, under his hand, in which it shall be sufficient briefly to state the offense charged, and the conviction and judgment thereon; and if any fine was assessed or collected, the amount so assessed and collected, with the date at which the same was so done. Such certificate shall be filed by the magistrate within twenty days after such conviction, in the office of the county clerk of the county in which such conviction was had; and the original, or a duly certified copy thereof, shall be evidence in all the courts of this state, of the facts therein contained.

SEC. 929. [**District attorney—Prosecutor.**—The district attorney, if present in any county in his district, in which any trial for misdemeanor is about to take place, or is in progress under this chapter, shall, if not actually engaged in any other business connected with his said office, appear and prosecute in such trial, if requested by the magistrate or the complainant.

#### CHAPTER XXX.—FUGITIVES TO AND FROM OTHER STATES AND COUNTRIES.

SEC. 930. [**Procedure—Resident fugitives.**—When an affidavit shall be filed before any judge of a district court, or any judge of probate or police court, or any justice of the peace, within this state, setting forth that any person charged with the commission of any criminal offense against the laws of any other state or any of the territories of the United States, and which, if the act had been committed in this state would, by the laws thereof, have been a crime, is at the time of filing such affidavit within the county where the same may be filed, it shall be lawful, and it is hereby made the duty of such judge or justice of the peace to issue his warrant, directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before the officer issuing such writ the person so charged.

SEC. 931. [**Same—Examination.**—When the person arrested, as provided in the last preceding section shall be brought before the officer issuing such warrant, it shall be lawful, and it is hereby made the duty of such officer to hear and examine such charge, and upon proof by him adjudged to be sufficient, to commit such person to the jail of the county in which such examination shall take place, or cause such person to be delivered to some suitable person, to be removed to the proper place of prosecution.

SEC. 932. [**Same—Notice.**—Whenever any person is committed to jail by any judge or justice of the peace, by either of the provisions of the preceding section, it shall be the duty of such judge or justice of the peace forthwith to give notice, by letter or otherwise, to the sheriff of the county in which such offense shall

have been committed, or to the person injured by such offense, or to the proper authorized agent or officer; and no person so committed shall be delayed longer in jail than necessary to allow a reasonable time to the person so notified, after he shall have received such notice, to apply for and obtain the proper requisition for the person so committed.

SEC. 333. [**Demand by executive of another state.**].—Whenever a demand is made upon the governor of this state by the executive of any other state or territory, in any case authorized by the constitution and laws of the United States, for the delivery of any person charged in such state or territory with any crime, if such person is not held in custody or under bail to answer for any offense against the laws of the United States or of this state, he shall issue his warrant under the seal of the state, authorizing the agent who makes the demand, either forthwith or at such time as may be designated in the warrant, to take and transport such person to the line of this state, at the expense of such agent, and may also by such warrant require all peace officers to afford needful assistance in the execution thereof.

SEC. 334. [**Agents to foreign governments.**].—The governor of this state may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any foreign government, any fugitive from justice, charged with treason or felony, and the accounts of the agents appointed must be audited by the auditor, and paid out of the state funds.

#### CHAPTER XXXI.—SEARCH WARRANTS.

SEC. 335. [**Warrants issued.**].—If shall be lawful for any magistrate to issue warrants to search any house or place: *First.* For property stolen, embezzled or obtained under false pretenses or tokens. *Second.* For forged or counterfeit coins, stamps, labels, trade marks, bank bills or other instruments in writing, or for counterfeiting instruments. *Third.* For books, pamphlets, ballads or printed papers containing obscene language, prints, pictures or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold or circulated. *Fourth.* For any gaming table, establishment, device or apparatus kept or exhibited for the purpose of unlawfully gaming, and for any money or personal property won by unlawful gaming. *Fifth.* For the body of any deceased person all leged to have been unlawfully removed from its sepulchre or grave.

SEC. 336. [**Complaint.**].—No warrant for search, as described in the preceding section, shall be issued until a complaint in writing, upon oath, has been filed with the magistrate; such complaint shall be signed by the complainant, and particularly describe the house or place to be searched, the person to be seized and the things to be searched for, and allege substantially the offense in relation thereto, and that the complainant verily believes that such things are there concealed.

SEC. 337. [**Contents.**].—The warrant for search shall be directed to the proper officer, and shall recite, by reference to the complaint annexed, or otherwise, all the material facts alleged in the complaint, and particularly describe the thing for which the search is to be made, the house or place to be searched, and the person to be seized. It shall command the officer to search such house or place in the day time, for the property, or other things, and if found, to seize and bring the same, together with the person to be seized, before the magistrate, or some other magistrate of the county, having cognizance of the same.

SEC. 338. [**At night.**].—If the magistrate is satisfied that there is urgent necessity therefor, the warrant may order the searching of such house or place in the night time.

SEC. 339. [**Disposition of property seized.**].—When the warrant is executed by the seizure of the property or things described therein, the same shall be safely kept by the magistrate, to be used as evidence.

SEC. 340. [**Same—After examination.**].—If upon the examination, the

magistrate shall be satisfied that the offense set forth in the complaint, in reference to the property, or other thing, seized by the officer, has been committed, it shall be his duty either to keep possession of such property, or other things, or deliver them to the sheriff of the proper county, there to remain until the case against the offender has been disposed of, or the claimant's right has been otherwise ascertained.

**Sec. 341. [Same after conviction.]**—Upon the conviction of the offender, the property stolen, embezzled, or obtained under false pretenses, shall be returned to its owner, and the other things specified shall be burnt or otherwise destroyed, under the direction of the court; but if the alleged offender shall be discharged, either before the magistrate or the court before which he is recognized to appear, the property, or other things, shall be returned to the person in whose possession they were found.

**Sec. 342. [Property seized liable—Fines, etc.]**—When the person in whose possession money, or other property, won at gambling, has been found, shall be convicted of any of the offenses of gambling, or winning of money, or property, by any unlawful gaming, such money, or other property, shall be liable to pay any judgment which may be rendered against such person.

**Sec. 343. [Counterfeit coin or instruments.]**—Whenever any counterfeit coin or instrument for the purpose of making or gilding counterfeit coin, shall be taken from the convicts, or persons indicted for counterfeiting, or having the same in possession with criminal intent, and shall remain in the keeping of any county officers, it shall be lawful for the commissioners of the proper county to melt the said counterfeit coin into a mass, or cast the same into other form than that of coin, and sell the same, together with the instruments aforesaid, and pay the avails into the treasury of such county; *Provided*, That said instruments be so mutilated and broken as to prevent their being applied to the purpose of counterfeiting.

**Sec. 344. [Unclaimed stolen property.]**—When any property stolen, embezzled, or obtained under false pretenses, shall, after the trial of the person charged with the larceny, embezzlement, or false obtaining thereof, remain in the possession of any officer, unclaimed by the owner, for the space of three months, the same shall, after public notice in a newspaper printed in the county, be sold at auction to the highest bidder, under the direction of the prosecuting attorney, and the avails thereof paid over to the treasury of the county for the use of the common schools therein.

**Sec. 345. [Same.]**—In case any property stolen, embezzled, or obtained under false pretenses, shall remain in the custody of any officer for one year unclaimed, as aforesaid, and the thief shall not within that time be taken, or if taken shall escape, it shall be disposed of in like manner, and for like purposes, as indicated in the preceding section.

#### CHAPTER XXXII.—DISCHARGE ON BAIL BY JUDGES.

**Sec. 346. [When and how.]**—When any person charged with the commission of any bailable offense, shall be confined in jail, whether committed by warrant under the hand and seal of any judge or magistrate, or by the sheriff or coroner, under any warrant upon indictment found, it shall be lawful for any judge of the supreme court, judge of the district court within his district, or probate judge within his county, or police judge within the city of his jurisdiction, to admit such person to bail, by recognizing such person in such sum and with such securities as to such judge shall seem proper, conditioned for his appearance before the proper court, to answer the offense wherewith he may be charged.

**Sec. 347. [Warrant.]**—For taking such bail, the judge may, by his special warrant, under his hand and seal, require the sheriff or jailer to bring such accused before him, at the court-house of the proper county, at such time as in such warrant the judge may direct.

SEC. 348. [**Amount of bail.**—In fixing the amount of bail, the judge admitting to the same, shall be governed in the amount and quality of bail required by the direction of the district court in all cases where such court shall have made any order or direction in that behalf.

SEC. 349. [**Return of recognizance.**—In all cases, when a judge or examining court shall recognize a prisoner under the provisions of the four preceding sections, he shall forthwith deposit with the clerk of the proper court, the recognizance so taken, and also a warrant directed to the jailer requiring him to discharge the prisoner.

#### CHAPTER XXXIII.—SURRENDER BY SURETY.

SEC. 350. [**In term time.**—When any person who is surety in a recognizance for the appearance of any defendant before any court in this state desires to surrender the defendant, he shall, by delivering the said defendant in open court, be discharged from any further responsibility on said recognizance; and the said defendant shall be committed by the court to the jail of the county, unless he shall give a new recognizance, with good and sufficient sureties, in such amount as the court may determine, conditioned as the original recognizance.

SEC. 351. [**At any time.**—In all cases of bail for the appearance of any person or persons charged with any criminal offense, the security or securities of such person or persons may, at any time before judgment is rendered upon *scire facias* to show cause why execution should not issue against such security or securities, seize and surrender such person or persons charged as aforesaid, to the sheriff of the county wherein the recognizance shall be taken.

SEC. 352. [**Duty of sheriff.**—And it shall be the duty of such sheriff, on such surrender and the delivery to him of a certified copy of the recognizance by which such security or securities are bound, to take such person or persons, so charged as aforesaid, into custody, and by writing acknowledge such surrender, and thereupon the security or securities shall be discharged from any such recognizance, upon payment of all costs occasioned thereby.

#### CHAPTER XXXIV.—HABEAS CORPUS.

SEC. 353. [**Writ, when allowed.**—If any person, except persons convicted of some crime or offense for which they stand committed, or persons committed for treason or felony, the punishment whereof is capital, plainly and specially expressed in the warrant of commitment, now is or shall be confined in any jail of this state, or shall be unlawfully deprived of his or her liberty, and shall make application either by him or herself, or by any person on his or her behalf, to any one of the judges of the district court, or to any probate judge, and does at the same time produce to such judge a copy of the commitment or cause of detention of such person, or if the person so imprisoned or detained is imprisoned or detained without any legal authority, upon making the same appear to such judge, by oath or affirmation, it shall be his duty forthwith to allow a writ of habeas corpus, which writ shall be issued forthwith by the clerk of the district court, or by the probate judge, as the case may require, under the seal of the court whereof the person allowing such writ is judge, directed to the proper officer, person or persons, who detains such prisoner.

SEC. 354. [**Return of writ.**—It shall be the duty of the officer or person to whom such writ shall be directed to convey the person or persons so imprisoned or detained and named in such writ, before the judge allowing the same, or, in case of his absence or disability, before some other judge of the same court, on the day specified in such writ, and shall make due return of said writ, together with the day and cause of the caption and detention of such person, according to the command thereof.

**SEC. 355. [Witnesses subpoenaed].**—Whenever a *habeas corpus* shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same shall deem it wholly unnecessary and useless, the said court or judge shall issue a subpoena to the sheriff of the county where said person shall be confined, commanding him to summon the witness or witnesses therein named to appear before such judge or court, at the time and place when and where such *habeas corpus* shall be returnable; it shall be the duty of such sheriff to serve said subpoena, if it be possible, in time to enable such witness or witnesses to attend.

**SEC. 356. [Duty of witnesses].**—It shall be the duty of the witness or witnesses thus served with said subpoena to attend and give evidence before the judge or court issuing the same, on pain of being guilty of a contempt, and shall be proceeded against accordingly by said judge or court.

**SEC. 357. [Trial].**—On the hearing of any *habeas corpus* issued as aforesaid, it shall be the duty of the judge or court who shall hear the same to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offense mentioned in the warrant of commitment as aforesaid, whether said offense be technically set out in said commitment or not, and upon which hearing said judge or court may either recommit, bail or discharge, according to the facts of the case.

**SEC. 358. [Trial—Bail—Certificate].**—When the said judge shall have examined into the cause of the caption and detention of the person so brought before him, and shall be satisfied that the person is unlawfully imprisoned or detained, he shall forthwith discharge such prisoner from said confinement. And in case the person or persons applying for such writ shall be confined or detained in a legal manner, on a charge of having committed any crime or offense, the said judge shall, at his discretion, commit, discharge or let to bail such person or persons, and if the said judge shall deem the offense bailable, on the principles of law, he shall cause the person charged as aforesaid to enter into recognizance, with one or more sufficient securities, in such sum as the judge shall think reasonable, the circumstances of the prisoner and the nature of the offense charged considered, conditioned for his appearance at the next court where the offense is cognizable; and said judge shall certify his proceedings, together with the recognizance, forthwith, to the proper court; and if the person or persons charged as aforesaid shall fail to enter into such recognizance, he or they shall be committed to prison by such judge.

**SEC. 359. [Refusal to obey writ—Penalty].**—If any person to whom such writ of *habeas corpus* shall be directed as aforesaid, shall neglect, or refuse to obey or make return of the same according to the command thereof, or shall make a false return of said writ, or upon demand made by the prisoner, or any person in his or her behalf, shall refuse to deliver to the person commanding, within six hours after the demand thereof, a true copy of the warrant, or commitment, or detainer of such prisoner, every person so offending shall, for the first offense, forfeit to the party aggrieved the sum of two hundred dollars, and for the second offense the sum of four hundred dollars, and shall, if an officer, be incapable to hold his said office.

**SEC. 360. [Clerk refusing to issue writ].**—If any clerk of the district court shall refuse to issue such writ, after allowance and demand made as aforesaid, he shall forfeit to the party aggrieved the sum of five hundred dollars.

**SEC. 361. [Persons set at large not re-imprisoned].**—Any person who shall be set at large upon any *habeas corpus*, shall not be again imprisoned for the same offense, unless by the legal order or process of the court wherein he or she shall be bound by recognizance to appear, or other court having jurisdiction of the cause or offense. And if any person shall, knowingly, contrary to this chapter, recommit or imprison, or cause to be recommitted or imprisoned for the same offense or pretended offense, any person so set at large, or shall knowingly aid or assist therein, he shall forfeit to the party aggrieved five hundred dollars,

any colorable pretense or variation in the warrant or commitment notwithstanding.

SEC. 362. [**Prisoners removed from custody of one officer.**—If any person of this state shall be committed to prison, or be in custody of any officer for any criminal matter, such prisoner shall not be removed therefrom into the custody of any other officer, unless by legal process, or when the prisoner shall be delivered to some inferior officer to carry to jail, or shall, by order of the proper court, be removed from one place to another within the state, for trial, or in case of fire, infection, or other necessity; and if any person, after such commitment, shall make out or sign, or countersign, any warrant for such removal, contrary to this chapter, he or she shall, for every such offense, forfeit to the party aggrieved five hundred dollars.

SEC. 363. [**Accessories to capital felonies.**—When any person shall appear to be committed by any judge or magistrate, and charged as accessory before the fact to any felony, the punishment whereof is capital, which felony shall be plainly and specially charged in the warrant of commitment, such person shall not be removed or bailed by virtue of this chapter, or in any other manner than as if this chapter had not been enacted.

SEC. 364. [**Expatriation.**—No citizen of this state, being an inhabitant or resident of the same, shall be sent a prisoner to any place whatever out of the state, for any crime or offense committed within this state, except in cases specially authorized by law, and every such imprisonment is hereby declared to be illegal. And if any such citizen shall be so imprisoned, he may for every such imprisonment maintain an action of false imprisonment in any court having cognizance thereof, against the person or persons by whom he shall be so imprisoned or transported contrary to law, and against any person who shall contrive, write, seal, sign, or countersign any writing for such imprisonment or transportation, or shall be aiding and assisting in the same, or any of them, and shall recover triple costs besides damages, which damages, so to be given, shall not be less than five hundred dollars; and every person knowingly concerned in any manner as aforesaid, in such illegal imprisonment or transportation, contrary to this chapter, and being thereof lawfully convicted, shall be disabled from thenceforth to bear any office of trust or profit within this state; *Provided*, That if any citizen of this state, or any person or persons at any time resident in the same, shall have committed, or shall be charged with having committed, any treason, felony, or misdemeanor, in any other part of the United States or territories where he or she ought to be tried for such offense, he, she, or they may be sent to the state or territory having jurisdiction of the offense.

SEC. 365. [**Penalties recovered by civil action.**—The penalties in this chapter made recoverable, shall be recovered by the party aggrieved, his or her executors or administrators, by civil action in any court having cognizance of the same; *Provided*, That no person shall be sued or molested for any offense against this chapter, unless within two years after the time when such offense shall have been committed; but if the party aggrieved shall then be in prison, then within two years after the decease of the person imprisoned, or his or her delivery out of prison. And in every such action it shall be lawful for the defendant to plead the general issue, and give the special matter in evidence.

SEC. 366. [**Informalities no ground for discharge.**—If any person shall be committed to prison, or be in custody of any officer for any criminal matter, by virtue of any warrant or commitment of any magistrate of this state having jurisdiction of such criminal matter, such person shall not be discharged from such imprisonment or custody by reason of any informality or defect of such warrant or commitment; *Provided*, Such warrant or commitment shall show substantially a criminal matter for which such magistrate had jurisdiction so to arrest or commit.

SEC. 367. [**Form of writ—Prisoner not in custody of officer.**—In case of confinement, imprisonment, or detention by any person not a sheriff,

deputy sheriff, coroner, jailer, constable, or marshal of this state, nor a marshal or other like officer of the courts of the United States, the writ of habeas corpus shall be in the form following:

\*THE STATE OF NEBRASKA, } ss.  
COUNTY.

*The State of Nebraska to the Sheriff of said County, greeting:*

We command you, that the body of \_\_\_\_\_, of \_\_\_\_\_, by \_\_\_\_\_ of \_\_\_\_\_ imprisoned and restrained of his liberty, as it is said, you take and have before \_\_\_\_\_, a judge of our \_\_\_\_\_ court \_\_\_\_\_, or, in case of his absence or disability, before some other judge of the same court at \_\_\_\_\_, forthwith to do and receive what our said judge shall then and there consider \_\_\_\_\_ concerning him in his behalf, and summon the said \_\_\_\_\_ then and there to appear before our said judge to show the cause of the taking and detaining the said \_\_\_\_\_; and have you there this writ, with your doings thereon.

Witness \_\_\_\_\_, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

[SEAL.]

SEC. 368. [Writ—Service and return.]—Such writ may be served in any county by any sheriff of the same or of any other county. When such writ shall be issued by a court in session, if such court shall have adjourned when the same is returned, it shall be returned before any judge of the same court, and if such writ is returned before one judge at a time when the court is in session, he may adjourn the case into the court, there to be heard and determined.

SEC. 369. [Person having prisoner, how designated.]—The person having the custody of the prisoner, may, in all writs of habeas corpus issued under this chapter, be designated by his name of office, if he have any, or by his own name; or, if both such names are unknown or uncertain, he may be described by an assumed appellation, and any person who is served with the writ, shall be deemed the person intended thereby.

SEC. 370. [Prisoner, how designated.]—The person to be produced shall be designated by his name, if known, and if that is unknown or uncertain, he may be described in any other way so as to make known who is intended.

SEC. 371. [Return of writ—Contents.]—In cases other than those provided for by the first section of this chapter, the person who makes the return shall state therein, and in the cases provided for in this chapter, the person in whose custody the prisoner shall be found, shall state in writing to the court or judge before whom the writ is returned, plainly and unequivocally—*First.* Whether he has or has not the party in his custody or power, or under restraint. *Second.* If he has the party in his custody or power, or under restraint, he shall set forth at large the authority and the true and whole cause of such imprisonment and restraint, with a copy of the writ, warrant, or other process, if any, upon which the party is detained. *Third.* If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause and by what authority such transfer was made.

SEC. 372. [Return, signed and sworn to.]—The return or statement shall be signed by the person making it, and it shall be sworn to by him, unless he is a public officer, and shall make the return in his official capacity.

SEC. 373. [Return as evidence—Costs.]—Upon the return of any writ of habeas corpus, issued as aforesaid, if it shall appear that the person detained or imprisoned is in custody, under any warrant or commitment in pursuance of the law, the return shall be considered as *prima facie* evidence of the cause of detention; but if the person so imprisoned or detained is restrained of liberty by any alleged private authority, the return of said writ shall be considered only as a plea of the facts therein set forth, and the party claiming the custody shall be held to make proof of such facts; and upon the final disposition of any case arising upon a writ of habeas corpus, the court or judge determining the same, shall make such order as to costs as the case may require.

SEC. 374. [Adjournment of cause.]—When any writ of habeas corpus shall have been allowed, the court or judge to which the same shall be returned,



or into which it shall be adjourned, shall, for good cause shown, continue the said cause, and shall make order for the safe keeping of the person imprisoned, or detain him, as the nature of the case may require.

SEC. 375. [**Record—Error.**]—The proceedings upon any writ of habeas corpus shall be recorded by the clerks and judges respectively, and may be reviewed, and writs of error and *certiorari* may issue as in other cases now provided by law.

SEC. 376. [**Fees, payment, etc.**]—The probate judges of the several counties of this state shall be allowed the sum of two dollars for every allowance of the writ of habeas corpus, and the hearing and determining of the case upon the return of such writ, which sum, together with the fees of the clerk, sheriff, and witnesses in the case, shall be taxed by such probate judge on his return of his proceedings on such writ, and the same, when the person brought before such judge on such writ was in custody by virtue of the proceedings in any case in which such person is charged or attempted to be charged with the commission of any criminal offense, and when such person shall either be held to bail, or shall be remanded to custody by such judge, shall be taxed and collected as part of the original cost in such case; but when such person shall be wholly discharged by such judge, such costs shall be taxed to the state, and paid out of the county treasury of the proper county, upon the order of the county commissioners; *Provided*, That no person or officer shall have the right to demand the payment in advance of any fees which such person or officer may be entitled to by virtue of such proceedings on habeas corpus, when such writ shall have been issued or demanded for the discharge from custody of any person confined under color of proceedings in any criminal case.

#### CHAPTER XXXV.—CUSTODY OF PRISONERS.

SEC. 377. [**Insecure jail.**]—Whenever it shall be lawful and necessary to confine any prisoner in custody previous to conviction upon a criminal accusation, or in custody for contempt, or alleged contempt of court, or upon an attachment by order of a court or judge, or otherwise in lawful custody, or upon conviction for any offense, and there shall be no secure jail in the proper county, the officer or person having him in such custody, may convey him to, and confine him in the jail of any county in the state, or other secure and convenient place of confinement in the state, to be procured by such officer or person having such prisoner in custody. [Amended 1875, 17.]

SEC. 378. [**Maintenance of prisoner after conviction.**]—The cost of keeping and maintaining any prisoner after his conviction of any offense punishable by imprisonment in the penitentiary, wherever he may be kept and confined, shall be paid by the state, according to the rate which may be established by law at the time when such services may be rendered or expenses incurred; *Provided*, The rate so established shall not be construed to apply to any contract which the governor may make for the confinement of convicts in the penitentiary of a state. [Amended 1875, 192.]

SEC. 379. [**Same—Payment.**]—The auditor of the state shall allow the account for the costs provided for in the last section, and draw warrants upon the treasury therefor, upon being furnished with a certified copy of the judgment or sentence of the court under which such convict is imprisoned, and an account, verified by affidavit, showing where and how long such convict has been kept, pursuant to such sentence.

SEC. 380. [**Costs before conviction.**]—The costs of keeping and maintaining any prisoner previous to his conviction of an offense punishable by imprisonment in the penitentiary, or either before or after his conviction of an offense not so punishable, or when he shall not be convicted of any offense, shall be paid by the county in which the offense may be committed, or alleged to have been committed.

SEC. 381. [**County attached liable for costs.**]—Every county attached for judicial purposes to another county, shall be liable for costs heretofore or

hereafter incurred in the prosecution of any person accused of the commission of an offense within the county so attached, and for costs in any other judicial proceeding originating therein, to the same extent, and on the same conditions, as such prosecution were carried on or such proceedings were had within such county so attached; *Provided*, That the fees of jurors shall be paid by the county from which they may be drawn.

SEC. 382. [**Payment.**]-The costs to be paid under this chapter, by any county, shall be such as may be provided by law at the time when the service may be rendered or the expenses incurred; and shall be allowed by the commissioners of the proper county, upon the certificate of the clerk of the district court that such costs have been taxed by him or by the court, and are chargeable upon such county.

#### CHAPTER XXXVI.—FILING AND RECORD OF RECOGNIZANCE.

SEC. 383. [**Duties of clerk.**]-Whenever a transcript or recognizance shall be returned to the clerk, it shall be his duty to enter the cause upon the appearance docket of the court, together with the date of the filing of the transcript and recognizance, the date and amount of the recognizance, the names of the sureties and the costs; whereupon the same shall be considered as of record in such court and proceeded on by process issuing out of said court, in the same manner as if such recognizance had been entered into before such court; and when any court having cognizance of a crime, shall take a recognizance, it shall be a sufficient record thereof on the journal of such court, to enter upon the journal the title of the cause, the crime charged, the name of the party and his sureties thereto, the amount of such recognizance, and the time therein required for the appearance of the accused, and the same shall be considered as of record in such court; but in making up the complete record in any case, when one is required to be made, all recognizance, whether returned to or taken in such court, shall be recorded in full, if required by the prosecuting attorney or the accused.

#### CHAPTER XXXVII.—PROCEEDINGS UPON FORFEITURE OF RECOGNIZANCE.

SEC. 384. [**Forfeiture.**]-When any person under recognizance in any criminal prosecution, either to appear and answer, or testify in any court, shall fail to perform the conditions of such recognizance, his default shall be recorded and the recognizance forfeited in open court.

SEC. 385. [**Prosecution.**]-Whenever such recognizance shall have been forfeited as aforesaid, it shall be the duty of the prosecuting attorney of the county in which the recognizance was taken, to prosecute the same by civil action for the penalty thereof; and such action shall be governed by the provisions of the Code of Civil Procedure, so far as the same may be applicable.

SEC. 386. [**Reduction of penalty.**]-The court in which the action for the penalty of any forfeited recognizance is brought, may remit or reduce any part or the whole of such penalty, and may render judgment thereon according to the circumstances of the case and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable.

SEC. 387. [**Reduction of judgment.**]-Whenever any judgment shall have been rendered against the defendants for the whole or any part of the penalty of forfeited recognizance, as aforesaid, the court rendering said judgment shall have power to remit or reduce the amount thereof, when it shall be made to appear that after the rendition thereof the accused had been arrested and surrendered to the proper court, to be tried on such charge.

SEC. 388. [**Defects not to debar action, etc.**]-No action brought on any recognizance, shall be barred or defeated, nor shall judgment thereon be

SEC. 384. Recognizance need not be signed. The failure to designate the denomination of the debt as official character of officer before whom taken, will render the instrument void. 10 Neb. 329. A recognizance stated to be in sum of "three hundred" and certified by M as "J. P." held void. Id.

reversed by reason of any neglect or omission to note or record the default, nor by reason of any defect in the form of the recognizance if it sufficiently appear from the tenor thereof at what court the party or witness was bound to appear and that the court or officer before whom it was taken was authorized by law to require and take such recognizance.

#### CHAPTER XXXVIII.—DISCHARGE FROM CUSTODY OR FROM RECOGNIZANCE.

SEC. 389. [**When not indicted.**].—Any person held in jail charged with an indictable offense, shall be discharged if he be not indicted at the term of the court at which he is held to answer, unless such person shall have been committed to jail on such charge after the rising and final report of the regular grand jury for said term, in which case the court, in its discretion may discharge such person, or order a new grand jury, as provided in section four hundred and five, or require such person to enter into recognizance with sufficient security for his appearance before said court to answer such charge at the next term thereof; *Provided*, That such person so held in jail without indictment shall not be discharged, if it appears to the satisfaction of the court that the witnesses on the part of the state have been enticed or kept away, or are detained and prevented from attending court by sickness or some inevitable accident.

SEC. 390. [**Prisoner not brought to trial.**].—If any person indicted for any offense and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offense, which shall be held after such indictment found, he shall be entitled to be discharged, so far as relates to the offense for which he was committed, unless the delay shall happen on application of the prisoner.

SEC. 391. [**Same.**].—If any person indicted for any offense, who has given bail for his appearance, shall not be brought to trial before the end of the third term of the court in which the cause is pending, held after such indictment is found, he shall be entitled to be discharged, so far as relates to such offense, unless the delay happen to be on his application, or be occasioned by the want of time to try such cause, at such third term.

SEC. 392. [**Exception.**].—If, when application is made for the discharge of a defendant under either of the last two sections, the court shall be satisfied there is material evidence on the part of the state, which can not then be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term, the cause may be continued, and the prisoner remanded or admitted to bail as the case may require.

#### CHAPTER XXXIX.—GRAND JURY.

SEC. 393. [**Lists of cases for grand jury.**].—Before the first day of each term of a court at which a grand jury shall be summoned to appear, the clerk of said court shall make out two lists, on which he shall enter the names of all persons who appear, by the returns of the magistrates, to have been either committed or bailed for an offense during the vacation of such court, the name of the magistrate who committed or bailed, and distinguishing whether such person was committed or bailed; one of these lists shall be delivered by the judge to the foreman of the grand jury, and the other, together with all the transcripts and other documents returned by the magistrates, shall be delivered to the prosecuting attorney.

SEC. 394. [**Foreman.**].—When the grand jury shall be impaneled in the manner provided by law, the court shall appoint one of the number foreman.

SEC. 395. [**Oath of foreman.**].—When the foreman shall be appointed, an oath or affirmation shall be administered to him in the following words:

“Saving yourself and fellow jurors, you, as foreman of this grand inquest, shall diligently inquire, and true presentment make, of all such matters and things as shall

be given you in charge or otherwise come to your knowledge, touching the present service. The counsel of the state, your own, and your fellows', you shall keep secret, unless called on in a court of justice to make disclosures. You shall present no person through malice, hatred, or ill-will, nor shall you leave any person unrepresented, through fear, favor, or affection, or for any reward or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding."

**SEC. 396. [Oath of others.]**—Thereupon the following oath or affirmation shall be administered to the other grand jurors:

"The same oath which A. B., your foreman, hath now taken before you on his part, you, and each of you, shall well and truly observe and keep, on your respective parts."

**SEC. 397. [Charge.]**—The grand jury, after being sworn, shall be charged as to their duty by the judge, who shall call their attention particularly to the obligation of secrecy which their oaths impose, and to such offenses as he is by law required to specially charge.

**SEC. 398. [To retire.]**—After the charge of the court, the grand jury shall retire with the officer appointed to attend to them, and shall proceed to inquire of and present all offenses whatever, committed within the limits of the county in and for which they were impaneled and sworn or affirmed.

**SEC. 399. [Prosecuting attorney to attend grand jury.]**—The prosecuting attorney or the assistant prosecuting attorney shall be allowed at all times to appear before the grand jury, for the purpose of giving information relative to any matter cognizable by them, or giving them advice upon any legal matter they may require, and he may interrogate witnesses before them when they or he shall deem it necessary; but no other person shall be permitted to remain in the room with said jury while they are expressing their views or giving their votes on any matter before them.

**SEC. 400. [Subpoena witnesses.]**—Whenever required by the grand jury, or the prosecuting attorney, the clerk of the court in which such jury is impaneled shall issue subpoenas and other process to bring witnesses to testify before such grand jury.

**SEC. 401. [Witness—Oath.]**—Before any witness shall be examined by the grand jury, an oath or affirmation shall be administered to him, truly to testify of such matters and things as may be lawfully inquired of him before said jury. which oath or affirmation may be administered either by the foreman of said jury or by the clerk of the proper court. [Amended 1875, 17.]

**SEC. 402. [Witness refusing to answer.]**—If any witness appearing before a grand jury shall refuse to answer any interrogatories during the course of his examination, the fact shall be communicated to the court in writing, in which the question refused to be answered shall be stated, together with the excuse for the refusal, if any be given by the person interrogated; and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

**SEC. 403. [Same.]**—If the court determine that the witness is bound to answer, and he persist in his refusal, he shall be brought before the court, who shall proceed in the same manner as if the witness had been interrogated and refused to answer in open court.

**SEC. 404. [New jurors.]**—In case of the sickness, death, discharge, or non-attendance of any grand juror, after the grand jury shall be affirmed or sworn, it shall be lawful for the court, at their discretion, to cause another to be sworn or affirmed in his stead.

**SEC. 405. [New jury.]**—After the discharge of the grand jury, it shall be lawful for the court, when it shall be deemed necessary, to order the sheriff to call together a new grand jury from the bystanders or neighboring citizens, of sixteen good and lawful men, having the qualifications of grand jurors, who shall be re-

SEC. 405. A judge in calling a term of court has no authority to order sheriff to summon a grand jury. 9 Neb. 164. See note to section 664 civil code, p. 664.

turned and sworn or affirmed, and shall proceed in the same manner in all respects as provided by law in respect to grand juries.

SEC. 406. [**Secresy.**].—No grand juror or officer of the court shall disclose that an indictment has been found against any person not in custody or under bail, except by the issuing of process, until the indictment is filed and the case docketed.

SEC. 407. [**Same.**].—No grand juror shall be allowed to state or testify in any court in what manner he or other members of the grand jury voted on any question before them, or what opinion was expressed by any juror in relation to such question.

SEC. 408. [**When bill to be preferred.**].—At least twelve of the grand jurors must concur in the finding of an indictment; when so found, the foreman shall indorse on such indictment the words "A true bill," and subscribe his name thereto as foreman.

SEC. 409. [**Visit jail.**].—The grand jury shall, once at each term of the court at which they may be in attendance, visit the county jail, examine and report its condition as required by law.

• SEC. 410. [**Disposition of indictments.**].—Indictments found by a grand jury, shall be presented by their foreman to the court, and shall be filed with the clerk, who shall endorse thereon the day of their filing, and shall enter each case upon the appearance docket, and also upon the trial docket of the term, as soon as the parties indicted have been arrested.

SEC. 411. [**Assignment of causes.**].—The court shall assign said indictments for trial at as early a time in such term as is practicable, and the recognizances of parties and witnesses shall, in all such causes, be taken for their appearance at the time so assigned; and in case of the continuance of any cause to the next term of the court, such recognizances shall be for the appearance of the parties and witnesses on such day thereof as the court may direct; and at the end of the term the clerk shall deliver the indictments undisposed of to the prosecuting attorney for safe keeping.

## CHAPTER XL.—OF INDICTMENTS.

SEC. 412. [**Defects not fatal.**].—No indictment shall be deemed invalid nor shall the trial, judgment, or other proceedings be stayed, arrested, or in any manner affected: *First.* By the omission of the words, "with force and arms," or any words of similar import; or, *Second.* By omitting to charge any offense to have been contrary to a statute or statutes; or, *Third.* For the omission of the words, "as appears by the record," nor for omitting to state the time at which the offense was committed, in any case where time is not of the essence of the offense; nor for stating the time imperfectly; nor for want of a statement of the value or price of any matter or thing, or the amount of damages, or injury, in any case where the value, or price, or the amount of damages, or injury, is not of the essence of the offense; nor for the want of an allegation of the time or place of any material fact, when the time and place have once been stated in the indictment; nor that dates and numbers are represented by figures; nor for an omission to allege that the grand jurors were impaneled, sworn, or charged; nor for any surplusage or repugnant allegation when there is sufficient matter alleged to indicate the crime or person charged; nor for want of the averment of any matter not necessary to be proved; nor for any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

SEC. 413. [**Variances not fatal.**].—Whenever on trial of any indictment for any offense, there shall appear to be any variance between the statement in

SEC. 412. An indictment not void by reason of omission of the word "chosen." 1 Neb. 369. Nor by words "and the jurors aforesaid on their oath aforesaid," etc. 4 Neb. 285. When there are several counts in the first of which time and place are specifically stated, it is sufficient to allege in subsequent counts that the offense therein described was then and there committed. 9 Neb. 64.

such indictment, and the evidence offered in proof thereof in the christian name or surname, or both christian and surname or other description whatever of any person whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, such variance shall not be deemed ground for an acquittal of the defendant, unless the court before which the trial shall be had, shall find that such variance is material to the merits of the case or may be prejudicial to the defendant.

SEC. 414. [**Description of instrument.**].—In any indictment for falsely making, altering, forging, printing, photographing, uttering, disposing of or putting off any instrument, it shall be sufficient to set forth the purport and value thereof.

SEC. 415. [**Engraved plate, etc.**].—In any indictment for engraving or making the whole or any part of any instrument, matter or thing, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument, matter or thing shall have been engraved or made, or for having the unlawful custody or possession of any paper upon which the whole or any part of any instrument, matter or thing shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same may be usually known.

SEC. 416. [**Instruments in other cases.**].—That in all other cases whenever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof.

SEC. 417. [**Allegation—Attempt to defraud.**].—It shall be sufficient in any indictment where it shall be necessary to allege an intent to defraud, to allege that the party accused did the act with intent to defraud without alleging an intent to defraud any particular person or body corporate, and on the trial of any such indictment, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with the intent to defraud.

SEC. 418. [**Ownership.**].—When any offense shall be committed upon, or in relation to any property belonging to several partners or owners, the indictment for such offense shall be deemed sufficient if it allege such property belonged to any one or more of such partners or owners, without naming all of them.

SEC. 419. [**Joinder of offenses.**].—An indictment for larceny may contain also a count for obtaining the same property by false pretenses, or a count for embezzlement thereof, and for receiving or concealing the same property, knowing it to have been stolen; and the jury may convict of either offense, and may find all or any of the persons indicted guilty of either of the offenses charged in the indictment.

SEC. 420. [**Money described.**].—In every indictment in which it shall be necessary to make any averment as to any money, or bank bill, or notes, United States treasury notes, postal and fractional currency, or other bills, bonds or notes, issued by lawful authority and intended to pass and circulate as money, it shall be sufficient to describe such money or bills, notes, currency or bonds, simply as money, without specifying any particular coin, note, bill or bond; and such allegation shall be sustained by proof of any amount of coin or of any such note, bill, currency or bond, although the particular species of coin of which such amount was composed, or the particular nature of such note, bill, currency or bond shall not be proved.

SEC. 421. [**Election cases.**].—When an offense shall be committed in relation to any election, an indictment for such offense shall be deemed sufficient if it allege that such election was authorized by law, without stating the names of the officers holding the election, or the persons voted for, or the offices to be filled at such election.

SEC. 422. [**Perjury—Subornation.**].—That in every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and before what court or authority the oath or affirmation was taken, averring such court or authority to have full power to administer the same, together with the proper averment or counts to falsify the matter or matters, wherein the perjury is assigned, without setting forth any part of any record or proceeding, in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed.

SEC. 423. [**Receiver of stolen goods, where prosecuted.**].—Whenever any person shall be liable to prosecution as the receiver of any personal property that shall have been feloniously stolen, taken or embezzled, he may be indicted in any county where he received or had such property, notwithstanding the theft was committed in another county.

SEC. 424. [**Crime committed on county line.**].—When an offense shall be committed on a county line, the trial may be in either county divided by such line; and where any offense shall be committed against the person of another, and the person committing the offense shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either of said counties.

SEC. 425. [**Manslaughter.**].—In any indictment for manslaughter, it shall not be necessary to set forth the manner in which, or the means by which the death was caused; but it shall be sufficient to charge that the defendant did unlawfully kill and slay the deceased.

#### CHAPTER XLI.—ARREST AND ITS INCIDENTS AFTER INDICTMENT.

SEC. 426. [**Warrant—Arrest.**].—A warrant may be issued in term time or in vacation of the court, on an indictment found or presentment made in any county, and when directed to the sheriff of the county where such indictment was found, or presentment made, it shall be lawful for such officer to pursue and arrest the accused named in such warrant, in any county of this state where he may be found, and commit him to jail, or hold him to bail, as provided in this code.

SEC. 427. [**Same—Non-resident.**].—When the party accused shall reside out of the county in which such indictment was found, it shall be lawful to issue a warrant thereon, directed to the sheriff of the county where the accused shall reside or may be found; and it shall be the duty of such officer to arrest the accused and convey him to the county from which such writ was issued, and there commit him to the jail of said county, or hold him [to bail,] as provided in the preceding section.

SEC. 428. [**Recognizance in vacation.**].—When any sheriff or other officer shall be charged with the execution of a warrant issued on any indictment for a misdemeanor, he shall, during the vacation of the court from which the writ issued, have authority to take the recognizance of the person so indicted, together with sufficient sureties, resident and freeholders in the county from which such writ issued, in a sum of not less than fifty nor more than five hundred dollars, conditioned for the appearance of such person on the first day of the next term of such court.

SEC. 429. [**Return and filing.**].—The sheriff or other officer shall return the said writ according to the command thereof, with the name of the surety or sureties, together with the recognizance taken as aforesaid; and the recognizance so taken and returned shall be filed and recorded by the clerk of the court to which the same was returned, and may be proceeded on in the same way as if such recognizance had been taken in said court during term time.

SEC. 430. [**Recognizance in case of felony.**].—When any person shall have been indicted for a felony, and the person so indicted shall not have been arrested or recognized to appear before the court, the court may, at their discre-

tion, make an entry of the cause on their journal, and may order the amount in which the party [indicted] may be recognized for his appearance by any officer charged with the duty of arresting him.

SEC. 431. [**Same—Indorsement.**].—The clerk issuing a warrant on such an indictment shall indorse thereon the sum in which the recognizance of the accused was ordered, as aforesaid, to be taken.

SEC. 432. [**Same.**].—The officer charged with the execution of the warrant aforesaid shall take the recognizance of the party accused in the sum ordered as aforesaid, together with good and sufficient sureties, conditioned for the appearance of the accused at the return of the writ before the court out of which the same issued; and such officer shall return such recognizance to the said court, to be recorded and proceeded on as provided in this code.

SEC. 433. [**Return of all recognizances.**].—All recognizances taken during vacation of any court, by any judge or other officer thereof authorized to take them, shall be signed and sealed by the parties, and certified to by the officer taking the same.

SEC. 434. [**Indictment of convicts.**].—Whenever any convict in the penitentiary shall be indicted for any offense committed while confined therein, said convict shall remain in the custody of the warden of said penitentiary, subject to the order of the district court of the county where the penitentiary, in which such convict is confined, is situate.

#### CHAPTER XLII.—MOTIONS AND ISSUES UPON THE INDICTMENT.

SEC. 435. [**Two indictments for same act.**].—If there be at any time pending against the same defendant two or more indictments for the same criminal act, the prosecuting attorney shall be required to elect upon which he will proceed; and upon trial being had thereon the remaining indictment shall be quashed.

SEC. 436. [**Indictment recorded—Copy for accused.**].—The clerk of the district court shall, upon the filing of any indictment with him, and after the person indicted is in custody or let to bail, cause the same to be entered of record on the journal of said court, and in case of the loss of the original, such record or a certified copy thereof shall be used in place thereof upon the trial of the cause. And within twenty-four (24) hours after the filing of an indictment for felony, and in every other case on request, the clerk shall make and deliver to the sheriff, the defendant, or his counsel a copy of the indictment, and the sheriff on receiving such copy shall serve the same upon the defendant; and no one shall be, without his assent, arraigned or called on to answer to any indictment until one day shall have elapsed, after receiving in person or by counsel, or having an opportunity to receive a copy of such indictment as aforesaid. [Amended 1877, 4.]

SEC. 437. [**Counsel for accused.**].—The court before whom any person shall be indicted for any offense which is capital, or punished by imprisonment in the penitentiary, is hereby authorized and required to assign to such person counsel not exceeding two, if the prisoner has not the ability to procure counsel, and they shall have full access to the prisoner at all reasonable hours; and it shall not be lawful for the county clerk or county commissioners of any county in this state to audit or allow an account, [bill,] or claim hereafter presented by an attorney or counselor at law for services performed under the provisions of this section, until said account, bill, or claim shall have been examined and allowed by the court before whom said trial is had, and the amount so allowed for such services certified by said court; *Provided*, That no such account, bill, or claim shall in any case except in cases of homicide, exceed one hundred dollars.

SEC. 438. [**Time given.**].—The court shall allow the accused a reasonable time to examine the indictment and prepare exceptions thereto.

SEC. 439. [**Pleas and motions.**].—The accused may except to an indict-



ment by—*First*. A motion to quash. *Second*. A plea in abatement. *Third*. A demurrer.

SEC. 440. [**Motion to quash.**].—A motion to quash may be made in all cases, when there is a defect apparent upon the face of the record, including defects in the form of the indictment or in the manner in which an offense is charged.

SEC. 441. [**Plea in abatement.**].—A plea in abatement may be made when there is a defect in the record, which is shown by facts extrinsic thereto.

SEC. 442. [**Demurrer.**].—The accused may demur when the facts stated in the indictment do not constitute an offense punishable by the laws of this state, or when the intent is not alleged, when proof of it is necessary to make out the offense charged.

SEC. 443. [**Interlocutory plea sustained.**].—When a motion to quash, or a plea in abatement, has been adjudged in favor of the accused, he may be committed or held to bail in such sum as the court may require for his appearance at the first day of the next term of said court.

SEC. 444. [**Same—Waived.**].—The accused shall be taken to have waived all defects which may be excepted to by a motion to quash, or a plea in abatement, by demurring to an indictment or pleading in bar, or the general issue.

SEC. 445. [**Misnomer.**].—If the accused shall plead in abatement that he is not indicted by his true name, he must plead what his true name is, which shall be entered on the minutes of the court, and after such entry, the trial and all other proceedings on the indictment shall be had against him by that name, referring also to the name by which he is indicted, in the same manner in all respects as if he had been indicted by his true name.

SEC. 446. [**Demurrer to plea in abatement.**].—To any plea in abatement the prosecuting attorney may demur if it is not sufficient in substance, or he may reply, setting forth any facts which may show that there is no defect in the record as charged in the plea.

SEC. 447. [**Demurrer overruled.**].—After a demurrer to an indictment has been overruled, the accused may plead "not guilty," or in bar.

SEC. 448. [**Arraignment.**].—The accused shall be arraigned by reading to him the indictment, unless in cases of indictments for misdemeanors, the reading shall be waived by the accused by the nature of the charge being made known to him, and he shall then be asked whether he is guilty or not guilty of the offense charged.

SEC. 449. [**Plea in bar.**].—The accused may then offer a plea in bar to the indictment that he has before had judgment of acquittal, or been convicted or been pardoned for the same offense; and to this plea the prosecuting attorney may reply that there is no record of such acquittal or conviction, or that there has been no pardon; and on the trial of such issue to a jury the accused must produce the record of such conviction or acquittal, or the pardon, and prove that he is the same person charged in the record, or mentioned in the pardon; and shall be permitted to adduce such other evidence as may be necessary to establish the identity of the offense.

SEC. 450. [**Same.**].—No plea in bar or abatement shall be received by the court unless it be in writing, signed by the accused, and sworn to before some competent officer.

SEC. 451. [**Rule as to plea in bar.**].—If the issue on the plea in bar be

SEC. 441. Objections to mode of selecting jury must be by challenge or plea in abatement. 9 Neb. 164.

SEC. 447. It is error to put accused on trial before he has plead to the indictment. 1 Neb. 395. But if he plead not guilty and afterwards files a motion to quash which is determined, and trial proceeds without a renewal of the plea, the presumption is that it as first made, was not withdrawn. Id. When accused pleads "not guilty" he cannot in connection with such plea, by other pleas, raise questions in respect to a former conviction. 6 Neb. 123.

SEC. 448. See 1 Neb. 170.

SEC. 449. It is indispensable to a plea of former conviction that the court whose record is relied upon to sustain it, had jurisdiction over the alleged offense. 6 Neb. 107. If accused is charged in one count in an indictment with an offense for which he was convicted in a foreign country, and also in a second count, is charged with a different and distinct offense, the plea of autrefois convict is bad. 6 Neb. 123.

found against the defendant, or if upon the arraignment the accused offer no plea in bar, he shall plead "guilty" or "not guilty;" but if he plead evasively, or stand mute, he shall be taken to have plead "not guilty."

SEC. 452. [**Plea of guilty.**—If the accused plead "guilty," the plea shall be recorded on the indictment, and the accused shall be placed in the custody of the sheriff until sentence.

SEC. 453. [**Plea of not guilty.**—If the accused plead "not guilty," the plea shall be entered on the indictment, and the prosecuting attorney shall, under the direction of the court, designate a day for trial, which shall be a day of the term at which the plea is made, unless the court for good reasons continue the case to a subsequent term.

SEC. 454. [**Accused insane, etc.**—A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offense during the continuance of the lunacy or insanity. If, after verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after judgment and before execution of the sentence, such person shall become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all such cases it shall be the duty of the court to impanel a jury to try the question, whether the accused be, at the time of impaneling, insane or lunatic.

#### CHAPTER XLIII.—CHANGE OF VENUE.

SEC. 455. [**Affidavit.**—All criminal cases shall be tried in the county where the offense was committed, unless it shall appear to the court by affidavits that a fair and impartial trial cannot be had therein; in which case the court may direct the person accused to be tried in some adjoining county.

SEC. 456. [**Transcript, etc.**—When the venue is changed to an adjoining county, the clerk of the court in which the indictment was found, shall make out a certified transcript of all the proceedings in the case, which, together with the original indictment, he shall transmit to the clerk of the court to which the venue is changed, and the trial shall be conducted in all respects as if the offender had been indicted in the county to which the venue has been changed. The costs accruing from a change of venue shall be paid by the county in which the indictment was found.

SEC. 457. [**Warrant.**—When a court has ordered a change of venue, a warrant shall be issued by the clerk, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he is to be tried, there to be safely kept by the jailer thereof, until discharged by due course of law.

SEC. 458. [**Witnesses.**—When a change of venue is allowed, the court shall recognize the witnesses on the part of the state to appear before the court in which the prisoner is to be tried.

#### CHAPTER XLIV.—PREPARATION FOR EVIDENCE.

SEC. 459. [**Subpoena.**—In all criminal cases it shall be the duty of the clerk, upon a precipe being filed, to issue writs of subpoena for all witnesses named therein, directed to the sheriff of his county, or of any county of the state where the witnesses reside or may be found, which shall be served and returned as in other cases; and such sheriff, by writing indorsed on said writs, may depute any disinterested person to serve and return the same.

SEC. 460. [**Return.**—If the subpoena be served by such special deputy, it

SEC. 453. The failure to enter plea on indictment is no ground for reversal of judgment when the plea is contained in another part of the record. 5 Neb. 380.

SEC. 455. Applications for change are addressed to the sound discretion of the court. Counter affidavits may be filed. 4 Neb. 286. The record should show the affidavits upon which the change is made. But if the record is silent on this point the presumption is that the court did its duty. 5 Neb. 381.

SEC. 456. Cited 5 Neb. 380. Expenses of county in which cause is tried including jurors, bailiffs, use of court room, etc., are not costs within the meaning of the last clause of this section. 10 Neb. 304.

shall be his duty, after serving the same, to return thereon the manner in which the same was served; and also make oath or affirmation to the truth of said return, before some person competent to administer oaths; which shall be indorsed on such writ, and the same shall be returned according to the command thereof by the person serving the same through the post office or otherwise.

SEC. 461. [**Coertion of witnesses.**].—Except as otherwise provided, the provisions of the Code of Civil Procedure, relative to compelling the attendance and testimony of witnesses, their examination and administering of oaths and affirmations, and proceedings for contempt to enforce the remedies and protect the rights of parties, shall extend to criminal cases, so far as they are in their nature applicable.

SEC. 462. [**Depositions.**].—Where any issue of fact is joined on any indictment, and any material witness for the defendant resides out of the state, or residing within the state, is sick or infirm, or is about to leave the state, such defendant may apply in writing to the court in term time, or the judge thereof in vacation, for a commission to examine such witness upon interrogatories thereto annexed, and such court or judge may grant the same, and order what and for how long a time notice shall be given to the prosecuting attorney before the witness shall be examined.

SEC. 463. [**Same.**].—The proceedings in taking the examination of such witness and returning it to court, shall be governed in all respects as the taking of depositions in all civil cases.

#### CHAPTER XLV.—TRIAL OF INDICTMENTS.

SEC. 464. [**Presence of accused.**].—No person indicted for a felony shall be tried unless personally present during the trial. Persons indicted for a misdemeanor may, at their own request, by leave of the court, be put on trial in their absence. The request shall be in writing, and entered on the journal of the court.

SEC. 465. [**Separate trial.**].—When two or more persons are indicted for felony, each person so indicted shall, on application to the court for that purpose, be separately tried, and every person charged with felony shall be furnished, previous to his trial, with a copy of the indictment, and at his request, with a list of the witnesses upon whose testimony the indictment was found. [Amended 1875, 17.]

SEC. 465 a. [**Special venire, how drawn.**].—SEC. 1. That when two or more persons shall have been charged together in the same indictment or information with a crime, and one or more shall have demanded a separate trial, and had the same, and when the court shall be satisfied, by reason of the same evidence being required in the further trial of parties to the same indictment or information that the regular panel and bystanders are incompetent because of having heard the evidence, to sit in further causes in the same indictment or information, then it shall be lawful for the court to require the clerk of the court to write the names of sixty electors of the county wherein said cause is being tried, each upon a separate slip of paper, and place the same in a box, and after the same shall have been thoroughly mixed, to draw therefrom such a number as in the opinion of the court will be sufficient from which to select a jury to hear said cause, and the electors whose names are so drawn shall be summoned by the sheriff to forthwith appear before the court, and after having been examined, such as are found competent, and shall have no lawful excuse for not serving as jurors, shall constitute a special venire from which the court shall proceed to have a jury impan-

SEC. 462. When a deposition taken on behalf of accused, as to his good character, is suppressed, and no exception taken, the correctness of the ruling cannot be questioned on error in the supreme court. 7 Neb. 329.

SEC. 464. Record should show presence of accused at and during the trial, and at the rendition of the verdict. 1 Neb. 391. But if it show his presence during the impanelling of the jury, his filing of instructions with the clerk, and exceptions to charge of the court, the presumption is that he was present, there being no allegation to the contrary in the motion for new trial. 4 Neb. 227.

SEC. 465 a. "An act to provide for a special venire in criminal cases." Approved and took effect Feb. 28, 1981.

elled for the trial of the cause, and the court may repeat the exercise of this power until all the parties charged in the same indictment or information shall have been tried. [1881 § 1, chap. 84.]

SEC. 466. [**Jury.**—In all [criminal] cases, except as may be otherwise expressly provided, the jury summoned and impanelled according to the provisions of the laws in force relating to the summoning and impaneling of juries in other cases, shall try the accused.

SEC. 467. [**Challenge of jurors.**—Every person arraigned for any crime, punishable with death, shall be admitted, on his trial, to a peremptory challenge of sixteen jurors, and no more; and every person arraigned for any offense that may be punishable by imprisonment for a term exceeding eighteen months, shall be admitted to a peremptory challenge of eight jurors; and in all other criminal trials, the defendant shall be allowed a peremptory challenge of six jurors. The attorney prosecuting on behalf of the state, shall be admitted to a peremptory challenge of six jurors, in all cases where the offense charged is punishable with death, and of three jurors in all other cases.

SEC. 468. [**Causes for challenge.**—The following shall be good causes for challenge to any person called as a juror on the trial of any indictment: *First.* That he was a member of the grand jury which found the indictment. *Second.* That he has formed or expressed an opinion as to the guilt or innocence of the accused; *Provided,* That if a juror shall state that he has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to examine, on oath, such juror as to the ground of such opinion; and if it shall appear to have been founded upon reading newspaper statements, communications, comments, or reports, or upon rumor, or hearsay, and not upon conversations with witnesses of the transactions, or reading reports of their testimony, or hearing them testify, and the juror shall say, on oath, that he feels able notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror is impartial, and will render such verdict, may, in its discretion, admit such juror as competent to serve in such case. *Third.* In indictments for an offense, the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death. *Fourth.* That he is a relation, within the fifth degree, to the person alleged to be injured, or attempted to be injured, or to the person on whose complaint the prosecution was instituted, or to the defendant. *Fifth.* That he has served on a petit jury which was sworn in the same cause against the same defendant, and which jury either rendered a verdict which was set aside, or was discharged after hearing the evidence. *Sixth.* That he has served as a juror in a civil case brought against the defendant for the same act. *Seventh.* That he has been in good faith subpoenaed as a witness in the case. *Eighth.* That he is an habitual drunkard. *Ninth.* The same challenges shall be allowed in criminal prosecutions that are allowed to parties in civil cases.

SEC. 469. [**Challenge—How tried.**—All challenges for cause shall be tried by the court, on the oath of the person challenged, or on other evidence, and such challenge shall be made before the jury is sworn, and not afterward.

SEC. 466. See note to sec. 664, civil code, p. 618.

SEC. 467. A party waiving his right of peremptory challenge, cannot complain of the disqualification of a juror, known to exist at the time of the impanelling. 4 Neb. 75.

SEC. 468. If opinion is merely hypothetical the juror is competent. But if he shows the slightest bias he should be rejected. The word opinion is frequently used to denote a mere impression. 4 Neb. 75. 5 Neb. 415. A juror who said he thought he could "return a fair and impartial verdict, but might possibly lean a little the other way," held incompetent. 4 Neb. 549. If it appear that juror has formed opinion from reading reports of testimony of witnesses he is incompetent although he might be willing to swear that, notwithstanding such opinion, he feels able to render an impartial verdict. 5 Neb. 33, 182. It must appear that the opinion was in reference to the guilt or innocence of the accused, to render the juror incompetent, and that testimony heard by him was in reference to the crime with which the accused is charged. 5 Neb. 351. If juror's convictions are such as would preclude him from returning a verdict of guilty, where the punishment would be death, it is good ground for challenge by the prosecution. 8 Neb. 412. Before a new trial can be granted on ground of previous expression of opinion by a juror unfavorable to the accused, it must appear by affidavit of both the prisoner and his counsel that neither of them had any knowledge before the verdict was rendered of the expression of such opinion. 7 Neb. 350. And see 8 Neb. 390. 11 Neb. 1.

**SEC. 470. [Same—Two defendants.]**—If two or more persons be put on trial at the same time, each must be allowed his separate peremptory challenge.

**SEC. 471. [Oath of jury.]**—When all challenges have been made, the following oath shall be administered:

"You shall well and truly try, and true deliverance make, between the state of Nebraska and the prisoner at the bar (giving his or her name); so help you God."

**SEC. 472. [Affirmation.]**—Any juror shall be allowed to make affirmation, and the words, "this you do as you shall answer under the pains and penalties of perjury," shall be substituted instead of the words, "so help you God."

**SEC. 473. [Interested witnesses.]**—No person shall be disqualified as a witness in any criminal prosecution, by reason of his interest in the event of the same, as a party or otherwise, or by reason of his conviction of any crime, but such interest or conviction may be shown for the purpose of affecting his credibility. In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offenses, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness; nor shall the neglect or refusal to testify create any presumption against him, nor shall any reference be made to, nor any comment upon, such neglect or refusal.

**SEC. 474. [Co-defendant witness.]**—When two or more persons shall be indicted together, the court may, at any time before the defendant has gone into his defense, direct any one of the defendants to be discharged, that he may be a witness for the state. An accused may, also, when there is not sufficient evidence to put him upon his defense, be discharged by the court; or, if not discharged by the court, shall be entitled to the immediate verdict of the jury, for the purpose of giving evidence for others accused with him; such order of discharge in either case shall be a bar to another prosecution for the same offense.

**SEC. 475. [Evidence by injured female.]**—In trials for taking a woman away with intent to force her to be married or defiled, and for seduction, for the purpose of prostitution, no conviction shall be had on the evidence of the female offended against, unsupported by other evidence.

**SEC. 476. [Evidence—Conspiracy.]**—In trials for conspiracy, in cases when an overt act is required by law to consummate the offense, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts so alleged be proved on trial; but other overt acts not alleged in the indictment may be given in evidence on the part of the prosecution.

**SEC. 477. [Treason—Kindred offenses.]**—In trials for treason, no evidence shall be given of any overt act that is not expressly laid in the indictment; and no conviction shall be had upon any indictment for said offense, unless one or more overt acts be expressly alleged therein. No person shall be convicted of treason but by the testimony of two lawful witnesses to the same overt act of treason whereof he stands indicted, unless he confesses the same in open court; and no person shall be convicted of an offense under the twenty-third or twenty-fourth section of this code, but by the testimony of two credible witnesses, unless the person indicted confesses his guilt in open court.

**SEC. 478. [Order of procedure on trial.]**—After the jury has been

SEC. 471. Where record states substance of the oath it will be presumed that it was administered according to the statutory form. 4 Neb. 287. Cited 10 Neb. 104.

SEC. 473. Effect of admissions and statements of prisoner. 7 Neb. 340. 8 Neb. 87, 91. And of confessions. 4 Neb. 230. 10 Neb. 399. It is not error for court to tell the jury when prisoner testifies in his own behalf, that they are "at liberty to consider the great interest which he has in the result." 8 Neb. 418.

SEC. 474. When separate trials are awarded to parties jointly indicted each is a competent witness for the state, without being first acquitted or convicted, and without a *nolle prosequi* being first entered upon the indictment. 5 Neb. 35.

SEC. 478. Order of introducing evidence discretionary with court. 7 Neb. 337. Examination and cross examination of witnesses. 1 Neb. 395. 5 Neb. 183. 7 Neb. 341. 9 Neb. 250. Interested witnesses. 5 Neb. 383. Evidence and its competency. 1 Neb. 122. 3 Neb. 366. 5 Neb. 417. 6 Neb. 141, 285. 7 Neb. 333. 8 Neb. 411, 416. [See note to sec. 328, civil code p. 574.] Res gestae. 3 Neb. 366. Dying declarations. 2 Neb. 163. Arguments of counsel. 4 Neb. 76. Improper conduct of counsel. 8 Neb. 89. Prosecutor may re-open case and introduce further evidence, even after examination of witnesses for the defense has commenced. 7 Neb. 341. Insanity as a defense. 4 Neb. 408. 9 Neb. 252. Instructions to jury. 3 Neb. 368. 4 Neb. 238, 288, 551. 5 Neb. 185. 6 Neb. 144, 283, 340. 7 Neb. 342, 345. 8 Neb. 90, 415, 418.

impaneled and sworn, the trial shall proceed in the following order: *First.* The counsel for the state must state the case of the prosecution, and may briefly state the evidence by which he expects to sustain it. *Second.* The defendant, or his counsel must then state his defense, and may briefly state the evidence he expects to offer in support of it. *Third.* The state must first produce its evidence; the defendant will then produce his evidence. *Fourth.* The state will then be confined to rebutting evidence, unless the court, for good reason, in furtherance of justice, shall permit it to offer evidence in chief. *Fifth.* When the evidence is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the court; which instructions shall be reduced to writing, if either party require it. *Sixth.* When the evidence is concluded, unless the case is submitted without argument, the counsel for the state shall commence, the defendant or his counsel follow, and the counsel for the state conclude the argument to the jury. *Seventh.* The court, after the argument is concluded, shall immediately, and before proceeding with other business, charge the jury; which charge, or any charge given after the conclusion of the argument, shall be reduced to writing by the court, if either party request it, before the argument to the jury is commenced: and such charge or charges, or any other charge or instruction provided for in this section, when so written and given, shall in no case be orally qualified, modified, or in any manner explained to the jury by the court; and all written charges and instructions shall be taken by the jury in their retirement and returned with their verdict into court, and shall remain on file with the papers of the case.

**SEC. 479. [View of place.]**—Whenever in the opinion of the court it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of the sheriff, to the place, which shall be shown to them by some person appointed by the court. While the jury are thus absent, no person other than the sheriff having them in charge, and the person appointed to show them the place, shall speak to them on any subject connected with the trial.

**SEC. 480. [Mistake in offense.]**—When it shall appear at any time before the verdict that a mistake has been made in charging the proper offense, the accused shall not be discharged if there appear to be good cause to detain him in custody; but the court must recognize him to answer to the offense on the first day of the next term of such court; and shall, if necessary, likewise recognize the witnesses to appear and testify.

**SEC. 481. [Same.]**—When a jury has been impaneled in a case contemplated by the preceding section, such jury may be discharged without prejudice to the prosecution.

**SEC. 482. [Exceptions by defendant.]**—In all cases where a defendant shall feel himself aggrieved by any opinion or decision of the court, he may present his bill of exceptions thereto; and it shall be the duty of the court to sign and seal the same; and the taking, preparing, and signing, and sealing of said bill, shall be governed by the rules established in such matters in civil cases. Where the ground of exception is that the verdict is not sustained by sufficient evidence, or is contrary to law, and the court has overruled a motion for a new trial made on that ground, the bill of exceptions shall set out the evidence. The bill of exceptions, when signed and sealed, shall be made a part of the record, and shall have the same force and effect as in civil cases.

**SEC. 483. [Same by prosecuting attorney.]**—The prosecuting attorney may take exceptions to any opinion or decision of the court during the prosecution of the cause; and the bill containing the exceptions, upon being presented, shall, if it be conformable to the truth, be signed and sealed by the court; which

SEC. 479. The view should be had in presence of prisoner, unless he waive the privilege. 5 Neb. 35.  
SEC. 482. See section 311 civil code, p. 571. The want of an exception in a capital case will not necessarily deprive the prisoner of his right to a new trial for errors of court prejudicial to him. 9 Neb. 302 and see 4 Neb. 530. The taking and preserving of exceptions governed by same rule as civil cases. 7 Neb. 329. If papers are struck from the files they cease to be a part of the record for any purpose, unless brought into it by order of court which may be done by bill of exceptions. 7 Neb. 355.  
SEC. 483. Cited 5 Neb. 587.

bill shall be made a part of the record, and be in all respects governed by the rules established as to bills of exceptions in civil cases, except as herein provided.

**SEC. 484. [Conduct of jury after case submitted].**—When a case is finally submitted to the jury, they must be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict, or are discharged by the court. The officer having them in charge shall not suffer any communication to be made to them, or make any himself, except to ask them whether they have agreed upon a verdict, unless by order of the court; nor shall he communicate to any one, before the verdict is delivered, any matter in relation to the state of their deliberations. If the jury are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person on the subject of the trial, or to listen to any conversation on the subject; and that it is their duty not to form or express an opinion thereon until the cause is finally submitted to them.

**SEC. 485. [Discharge of jury].**—In case a jury shall be discharged on account of sickness of a juror, or other accident, or calamity requiring their discharge, or after they have been kept so long together that there is no probability of agreeing, the court shall, upon directing the discharge, order that the reasons for such discharge shall be entered upon the journal; and such discharge shall be without prejudice to the prosecution.

**SEC. 486. [When jury agreed].**—When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Before the verdict is accepted, the jury may be polled at the request of either the prosecuting attorney or the defendant.

**SEC. 487. [Offense consisting of different degrees].**—Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged, and guilty of any degree inferior thereto, and upon an indictment for any offense, the jury may find the defendant not guilty of the offense, but guilty of an attempt to commit the same, where such an attempt is an offense.

**SEC. 488. [Verdict—Value of property].**—When the indictment charges an offense against the property of another by larceny, embezzlement, or obtaining under false pretenses, the jury, on conviction, shall ascertain and declare in their verdict, the value of the property stolen, embezzled or falsely obtained.

**SEC. 489. [Verdict—Murder].**—That in all trials for murder, the jury before whom such trial is had, if they find the prisoner guilty thereof, shall ascertain in their verdict, whether it be murder in the first or second degree, or manslaughter; and if such person be convicted by confession, in open court, the court shall proceed by examination of witnesses, in open court, to determine the degree of the crime, and shall pronounce sentence accordingly.

**SEC. 489 a. [Offenses committed in unorganized territory—Vενιπге].**—**SEC. 1.** That it shall be lawful for the judge of any judicial district court within the state of Nebraska, where it has been made to appear to him that a

**SEC. 484.** If jury have been permitted to separate, it will be presumed in the absence of a record to the contrary, that they were admonished by the court. 3 Neb. 371. 8 Neb. 413. Separation may be had in capital cases. 8 Neb. 92, 413.

**SEC. 486.** A verdict signed by all the jurors is good. 7 Neb. 342. If not signed by one as foreman, it is not error to permit such signature in open court and in presence of jury. *Id.* Effect of privy verdict. 10 Neb. 107. An omission to designate the defendant as the guilty party renders verdict void. 6 Neb. 341. An omission, in a verdict of "guilty of murder in the first degree," of the words, "in manner and form," etc., does not render it void. 5 Neb. 382. Jury should not be permitted to return a statement that they had "agreed to disagree." 10 Neb. 104.

**SEC. 487.** Under an indictment for murder in the first degree when jury find accused guilty of manslaughter, the failure to negative the fact that the crime was of a higher grade than that found is no ground for reversal of judgment. 6 Neb. 342.

**SEC. 489 a.** "An act to authorize the judge of the district court to designate the county where an indictment may be found, and the person tried for any felonious offense charged to have been committed in any unorganized county or territory of this state, or in any county where no district courts are held, and to provide for the payment of fees and expenses incurred in the arrest and prosecution of such persons, and to repeal an act entitled 'An act to authorize the judges of the district court to designate the county where an indictment may be found, and the person tried for any felonious offense charged to have been committed in any unorganized county, or in any county where no district courts are held.' Approved Feb. 25, 1875." [Laws 1875, page 31.] Approved Feb. 24, 1879. See 4 Neb. 20. 11 Neb. 1.

crime has been committed amounting to felony, within any unorganized county or territory, or in any county where no terms of the district court of this state are held, attached to or in his said district, for judicial or other purposes, to designate the county in his district wherein the alleged offense may be inquired into by the grand jury, and in case an indictment found, the person or persons so indicted, tried; *Provided*, Nothing herein shall prevent the person or persons indicted, upon a legal and proper application, removing the trial thereof to some other county in the same judicial district; *And provided, further*, That all costs and expenses for the arrest and prosecution of such person or persons shall be paid out of the general fund of the state; *And provided, further*, That no bill for costs or expenses shall be audited and paid, without the certificate of the presiding judge of said district that said services have been performed, and that the account is correct. [1879, 62.]

#### CHAPTER XLVI.—MOTIONS FOR NEW TRIAL AND FOR ARREST OF JUDGMENT.

**SEC. 490. [Causes for new trial.]**—A new trial, after a verdict of conviction, may be granted on the application of the defendant, for any of the following reasons, affecting materially his substantial rights: *First*. Irregularity in the proceedings of the court, or the prosecuting attorney, or the witnesses for the state, or any order of the court, or abuse of discretion, by which the defendant was prevented from having a fair trial. *Second*. Misconduct of the jury, or the prosecuting attorney, or of the witnesses for the state. *Third*. Accident or surprise, which ordinary prudence could not have guarded against. *Fourth*. That the verdict is not sustained by sufficient evidence or is contrary to law. *Fifth*. Newly discovered evidence material for the defendant, which he could not, with reasonable diligence, have discovered and produced at the trial. *Sixth*. Error of law occurring at the trial.

**SEC. 491. [Motion.]**—The application for new trial shall be by motion upon written grounds, filed at the term the verdict is rendered, and shall, except for the cause of newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, or [be] within three days after the verdict was rendered, unless unavoidably prevented. In assigning the grounds of such motion, it shall be sufficient to assign the same in the language of the statute, and without further or other particularity. [Amended Feb. 28. Took effect June 1, 1881.]

**SEC. 492. [Affidavit.]**—The causes enumerated in subdivisions two, three, and five of section four hundred and ninety, must be sustained by affidavits showing their truth, and may be controverted by affidavits.

**SEC. 493. [Arrest of judgment.]**—A motion in arrest of judgment may be granted by the court for either of the following causes: *First*. That the grand jury which found the indictment had no legal authority to inquire into the offense charged, by reason of it not being within the jurisdiction of the court. *Second*. That the facts stated in the indictment do not constitute an offense.

**SEC. 494. [Same—Effect.]**—No judgment can be arrested for a defect in form. The effect of allowing a motion in arrest of judgment shall be to place the defendant in the same position with respect to the prosecution, as before the indictment was found. If, from the evidence on the trial, there shall be sufficient reason to believe him to be guilty of an offense, the court shall order him to enter into a

SEC. 490. If evidence is conflicting, verdict will not be set aside. 4 Neb. 76. Nor unless it is clearly wrong. 10 Neb. 448. Otherwise, where there is no sufficient testimony to support it. 9 Neb. 66. All reasons for new trial should be set forth. 4 Neb. 228. And errors specifically assigned. 8 Neb. 88. [But see amendment to sec. 491.] New trial will not be granted on ground of newly discovered evidence, where it would be merely cumulative. 8 Neb. 414. Admission of illegal testimony, without objection, no ground for new trial. 7 Neb. 353. The granting of a new trial is within the exclusive discretion of trial court, and if that court, on application duly made, refuse to act upon it, it will be compelled to do so, unless such action could advantage the prisoner only by overriding a well established rule of criminal procedure. Id. 355. See note to sec. 314 civil code, p. 572.

SEC. 493. The motion applies only to the jurisdiction of the court and sufficiency of the indictment. 4 Neb. 230.



recognizance, with sufficient security conditioned for his appearance at the first day of the next term of the same court; otherwise the defendant shall be discharged.

#### CHAPTER XLVII.—JUDGMENT AND SENTENCE.

SEC. 495. [**Duty of court.**].—Before the sentence is pronounced, the defendant must be informed by the court of the verdict of the jury, and asked whether he has anything to say why judgment should not be pronounced against him.

SEC. 496. [**Same.**].—If the defendant have nothing to say, or if he show no good and sufficient cause why judgment should not be pronounced, the court shall proceed to pronounce judgment as provided by law.

SEC. 497. [**Fines.**].—Whenever a fine shall be the whole or part of a sentence, the court may, in its discretion, order that the person sentenced shall remain confined in the county jail until the amount of such fine and costs are paid.

SEC. 498. [**Sentence in certain cases.**].—In all cases when any person shall be convicted of any offense by this code declared criminal, and made punishable by imprisonment in the penitentiary, the court shall declare in their sentence, for what period of time within the respective periods prescribed by law, such convict shall be imprisoned at hard labor in the penitentiary; and shall moreover determine and declare in their sentence, whether any, and if any, for what period of time such convict shall be kept in solitary confinement in the cells of the penitentiary, without labor.

SEC. 499. [**Recognizance to keep the peace.**].—Any person convicted of any offense against the provisions of this act, may be required by the court to enter into a recognizance with sufficient surety, in such sum as the court may deem proper, to keep the peace and be of good behavior, for such length of time, not exceeding two years, as the court shall direct; and the court may order such person to stand committed until such order be complied with, or such person be otherwise discharged by due course of law.

SEC. 500. [**Committal until fine and costs paid.**].—In all cases wherein courts or magistrates have now, or may hereafter have, the power to punish offenses either in whole or in part, by requiring the offender to pay a fine or costs, or both, the said courts or magistrates may make it a part of the sentence that the party stand committed and be imprisoned in the jail of the proper county until the same be paid, or secured to be paid, or the defendant is otherwise discharged according to law.

SEC. 501. [**Costs upon conviction.**].—In every case of conviction of any person for felony or misdemeanor, it shall be the duty, of the court or magistrate to render judgment for the costs of prosecution against the person convicted.

SEC. 502. [**Sentence to county jail.**].—When any court or magistrate shall sentence any convict to imprisonment in the jail of the county as a punishment for the offense committed, the judgment and sentence shall require that the convict be imprisoned in the cell of the jail of the county, or that he be kept at hard labor in the jail, in the discretion of the court or magistrate, and when the imprisonment is to be without labor, the sentence may require the convict to be fed on bread and water only, the whole or any part of the term of imprisonment.

#### CHAPTER XLVIII.—PROCEEDINGS IN ERROR.

SEC. 503. [**Suspension of execution.**].—When a person shall be convicted of an offense, and shall give notice to the court of his intention to apply for a writ of error, the court may, at its discretion, on application of the person so convicted, suspend the execution of the sentence or judgment against him until

SEC. 495. If this section is not complied with judgment will be set aside and cause remanded with instructions to render verdict as required by law. 4 Neb. 232.

SEC. 498. Within the limits fixed by law, the term of imprisonment rests with the judge of the trial court. 6 Neb. 550.

the next term of the court, or for such period, not beyond the session of the court, nor beyond the next term of the supreme court, as will give the person so convicted a reasonable time to apply for such writ; *Provided*, When any such conviction is of an offense the punishment whereof is capital, at least one hundred days shall intervene between the date of such sentence and judgment, and the day appointed for the execution thereof.

**SEC. 504. [Same—Misdemeanor].**—No court shall suspend the execution of the sentence or judgment against any person convicted and sentenced for a misdemeanor, unless such person shall enter into a recognizance with such security as the court may require, conditioned that the person so convicted and sentenced shall appear at the next term of such court, and from term to term, until the case shall be determined, and abide the judgment or sentence of the court.

**SEC. 505. [Same—Felony].**—Whenever a person shall be convicted of a felony, and the judgment shall be suspended as aforesaid, it shall be the duty of the court to order the person so convicted into the custody of the sheriff, to be imprisoned until the case in error be disposed of. If a person so convicted shall escape, the jailer or other officer from whose custody the escape was made, may return to the clerk of the proper court, the writ by virtue of which the convict was held in custody, with information of the escape endorsed thereon, whereupon said clerk shall issue a warrant stating such conviction, and commanding the sheriff of the county to pursue after such person into any county in the state; and said sheriff shall take such person and commit him to the jail of such county.

**SEC. 506. [Term of suspense].**—If no writ of error be allowed by the next term of the court after the sentence was pronounced, the court shall, at such term, carry the same into execution; or if no such writ be allowed by the expiration of the time of suspension, the judgment shall be carried into effect by the proper officers, the same as it would have been previously, had there been no suspension.

**SEC. 507. [Judgment affirmed].**—If a writ of error be allowed, and on the hearing the judgment of the court in which the trial was had shall be affirmed, such court shall carry into execution the sentence pronounced against the defendant at the next term after the judgment of affirmance is rendered.

**SEC. 508. [Writ of error, how allowed].**—In criminal cases not punishable with death, after final judgment, writs of error may, on good cause shown, be allowed on the application of the defendant, by the supreme court, or any judge thereof in vacation, as in civil cases; and in criminal cases punishable with death, writs of error may be allowed on application, by said court when in open session, or by any judge thereof in vacation.

**SEC. 509. [Suspension—Capital cases].**—In all cases of conviction where the punishment shall be capital, the judges or court allowing such writ of error shall order a suspension of the execution until such writ of error shall be heard and determined; upon hearing such writ of error, they shall order the prisoner to be discharged, a new trial to be had, or appoint a day certain for the execution of the sentence, as the nature of the case may require.

**SEC. 510. [Returnable in cases of felony].**—In all cases of conviction for a felony, the court, judge, or judges allowing the writ of error, shall order the same to be made returnable before the supreme court and shall order a suspension of the execution of said sentence.

**SEC. 511. [Same—Misdemeanor].**—In cases of conviction for misdemeanor in the district court, the court or judge allowing the writ of error shall make it returnable as in cases of conviction of felony, and may order a suspension of the execution of the sentence upon the defendant on his entering into a recognizance before the clerk of the court in which the cause was tried, with sufficient

SEC. 508. Error must be affirmatively shown. 5 Neb. 354. In supreme court examination of questions relating to evidence is confined to such as were distinctly raised and passed upon in the lower court. 9 Neb. 250. An order refusing discharge of prisoner before final judgment, is not reviewable on writ of error. 10 Neb. 104. Proceedings must be instituted within one year after judgment. 8 Neb. 294.

SEC. 509. May remand cause for sentence if sec. 495 is not complied with. 4 Neb. 232.

security, to be approved of by the clerk, in such sum as shall be specified in the order of the court or judge allowing such writ of error, which recognizance shall be conditioned for the defendant's prosecuting said writ of error to effect and surrendering himself to the custody of the sheriff of the county in which such conviction was had, in case the judgment of the court shall not be reversed, or a new trial ordered.

SEC. 512. [**Defendant in penitentiary.**].—When the defendant has been committed to the penitentiary of this state, and the judgment by virtue of which the commitment is made shall be reversed on a writ of error, by which reversal the defendant shall be entitled to his discharge or to a new trial, the clerk of the court reversing said judgment shall, under the seal of the court, forthwith certify the same to the warden of the penitentiary.

SEC. 513. [**Same.**].—Said warden, on receipt of such certificate, in case a discharge of such defendant be ordered, shall immediately discharge such defendant from the penitentiary.

SEC. 514. [**Same.**].—In case a new trial be ordered, the warden of the penitentiary shall forthwith cause said defendant to be taken and conducted to the county jail and committed to the custody of the keeper thereof in the county in which said defendant was convicted.

#### EXCEPTIONS TAKEN BY PROSECUTING ATTORNEY.

SEC. 515. [**Presented to supreme court.**].—The prosecuting attorney may present to the supreme court any bill of exceptions taken under the provisions of section four hundred and eighty-three, and apply for permission to file it with the clerk thereof for the decision of such court upon the points presented therein; but prior thereto, he shall give reasonable notice to the judge who presided at the trial in which the bill was taken, of his purpose to make such application; and if the supreme court shall allow such bill to be filed, such judge shall appoint some competent attorney to argue the case against the prosecuting attorney, which attorney shall receive for his services a fee not exceeding one hundred dollars, to be fixed by such court, and to be paid out of the treasury of the county in which the bill was taken.

SEC. 516. [**Decision.**].—If the supreme court shall be of the opinion that the questions presented should be decided upon, they shall allow the bill of exceptions to be filed, and render a decision thereon.

SEC. 517. [**Same—Effect.**].—The judgment of the court in the case in which the bill was taken, shall not be reversed, nor in any manner affected; but the decision of the supreme court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered, or which may afterward arise in the state.

#### CHAPTER XLIX.—EXECUTIONS.

SEC. 518. [**In penitentiary case.**].—Every person sentenced to the penitentiary shall, within thirty days, and as early as practicable after his sentence, unless the execution thereof be suspended, be conveyed to the penitentiary of this state, by the sheriff of the county in which the conviction took place, and shall there be delivered into the custody of the warden of said penitentiary, together with a copy of the sentence of the court ordering such imprisonment, there to be safely kept until the term of his confinement shall have expired, or he shall be pardoned. If the execution of the sentence be suspended, and the judgment is afterward affirmed, the defendant shall be conveyed to the penitentiary within thirty days after the court shall direct the sentence to be executed.

SEC. 519. [**Assistance, etc.**].—The sheriffs of the several counties of this state, during the time they shall be employed in conveying to the penitentiary any person sentenced to imprisonment therein, shall have the same power and authority

to secure him in any jail within the state, and to demand the assistance of any sheriff, jailer, or other person within this state, in keeping such prisoner, as if the sheriff were in his own proper county; and all such sheriffs, jailers, or other persons so called upon, shall be liable, on refusal, to the same penalties as if the sheriff making the demand were in his own county.

**SEC. 520. [Sentence to jail.]**—When any person convicted of an offense shall be sentenced to imprisonment in the county jail, the court or magistrate shall order the defendant into the custody of the sheriff, constable, or other proper officer, and shall issue to such officer a warrant of commitment, who shall deliver the convict, together with a copy of the warrant, to the jailer, in whose custody he shall remain in the jail of the proper county, until the term of his confinement shall have expired, or he shall have been pardoned, or otherwise legally discharged.

**SEC. 521. [Execution against body.]**—In all cases of misdemeanor, in which courts or magistrates shall have power to fine any offender, and shall render judgment for such fine, it shall be lawful to issue executions for the same, with the costs taxed against said offender, to be levied on the goods and chattels of any such offender and, for want of the same, upon the body of said offender, who shall thereupon be committed to the jail of the proper county until said fine and costs be paid, or secured to be paid, or the offender be otherwise discharged according to law.

**SEC. 522. [Imprisonment at hard labor in such cases.]**—When the convict is adjudged to be imprisoned for fines, or costs, as provided for in section five hundred, the sentence and execution may, in the discretion of the court, or magistrate, require the imprisonment to be at hard labor by the convict. [Amended 1875, 18.]

**SEC. 523. [No dungeon or jail in county.]**—Where any jail, in any county in this state, shall not have a cell or dungeon therein, then, and in that case, when the court shall sentence any person or persons to imprisonment in the cell of any jail, under the provisions of this act, the person or persons so sentenced shall be confined in that part of the jail usually allotted to the confinement of criminals, or such convict may be imprisoned as provided in section three hundred and seventy-seven, when there is the necessity therefor mentioned in said section.

**SEC. 524. [Lien of judgments—Exemptions from execution.]**—Judgments for fines and costs in criminal cases shall be a lien upon all the property of the defendant within the county from the time of docketing the case by the clerk of the proper court, and judgments upon forfeited recognizance shall be a like lien from the time of forfeiture. No property of any convict shall be exempt from execution, issued upon any such judgment as aforesaid, against such convict, except in cases where the convict shall be sentenced to the penitentiary for a period of more than two years, or to suffer death, in which cases there shall be the same exemption as at the time may be provided by law for civil cases.

**SEC. 525. [Execution for fines, costs and forfeited recognizance.]**—It shall be the duty of the clerk of the district court to issue execution for every judgment rendered during the term, for fines and forfeited recognizance, and for the costs in such cases, which remain unpaid and unreplevied; and upon like condition each magistrate shall issue execution forthwith for fines and costs assessed by him.

**SEC. 526. [Replevy of fine and costs.]**—It shall and may be lawful for any person or persons, convicted of any criminal offense, to replevy the judgment for the fine and costs, or the costs only when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders entering into a recognizance before the court or magistrate, to the people of this state, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment; which recognizance, so taken, is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same; and upon the breach thereof, execution shall be issued

against the goods and chattels, lands and tenements of the persons who entered into recognizance, in the same manner as if it had been a judgment, which execution shall be collected in the same manner as is prescribed in the preceding section. No *scire facias* shall be necessary previous to issuing such execution.

SEC. 527. [**Same.**]—In all cases where the person or persons, convicted as aforesaid, shall replevy the fine and costs, as is provided in the last preceding section, no execution shall issue for said fine and costs, as prescribed in section five hundred and twenty-five; and further, such person or persons, after replevying the fine and costs as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment, in consequence of any conviction, unless where imprisonment is by this code made a part of the punishment; in that case such convicted person or persons shall be discharged from his, or her, or their imprisonment at the expiration thereof, if he, she or they have replevied the fine and costs as aforesaid.

SEC. 527 [a.] [**Execution to any county.**]—Executions for fines and costs of prosecution, and on recognizances taken in pursuance of the preceding section, may be issued into any county in this state.

SEC. 528. [**Release of fine and costs.**]—Whenever it shall be made satisfactorily to appear to the district court, or to the probate judge of the proper county, after all legal means have been exhausted, that any person who is confined in jail for any fine or costs of prosecution, for any criminal offense, hath no estate wherewith to pay such fine and costs, or costs only, it shall be the duty of said court or judge to discharge such person from further imprisonment, for such fine and costs; which discharge shall operate as a complete release of such fine and costs; *Provided*, That nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment, nor until the convict shall have been imprisoned at least one day for every three dollars of the amount adjudged against him.

SEC. 529. [**Transcript of judgment filed with clerk.**]—In every case, whenever it is desirable to obtain execution to be issued to another county, or against the lands or real estate of any person against whom a judgment for fine or costs has been rendered by a magistrate, the magistrate may file with the clerk of the district court of the county wherein such magistrate holds his office, a transcript of the judgment and proceedings in the cause, whereupon such clerk shall enter the cause upon the proper docket for execution to be forthwith issued thereon by such clerk, and served in all respects as though the judgment had been rendered in the district court of such county.

SEC. 580. [**Treatment of prisoners.**]—When the physician regularly employed to have the medical care of persons in a county jail, shall certify in writing to the jailer, that the health or safety of any convict confined in such jail requires that he be treated in a manner different from that prescribed by the sentence of such convict, such jailer shall render to the convict such other and different treatment as shall be specified in such certificate as necessary, and may discharge him altogether if required by such certificate; *Provided*, That such physician be one employed for such medical care by the approval of the county commissioners.

SEC. 531. [**Employing convicts in jail.**]—For the purpose of enabling the county commissioners of any county in this state to employ in a profitable manner, all persons who have heretofore been, or may hereafter be sentenced to hard labor in the jail of the county, said commissioners, or a majority of them, shall have power to designate the place where the persons so sentenced shall work, and to make all proper and needful regulations and provisions for the profitable employment of such convicts, and for their safe custody during such employment. The county jail is hereby declared to extend to any stone quarry, road or other place that shall be designated by the county commissioners for the employment of such convicts.

**SEC. 532. [Proceeds of convict labor.]**—It shall be the duty of the county commissioners to make the contracts for the employment of convicts as specified in the preceding section, and the sheriff of the county shall collect the proceeds of all such labor, and after paying the board of such convicts and the expenses incident to such labor to pay the balance to the county treasurer within ten days.

#### CHAPTER L.—RECEIPTS AND DISBURSEMENTS OF MONEY IN CRIMINAL CAUSES.

**SEC. 533. [To whom paid.]**—All moneys due upon any judgment for fines, costs, or forfeited recognizance, shall be paid to the magistrate or clerk of court where the judgment is pending, if paid before execution is issued therefor, otherwise to the officer holding the execution; or such moneys may be paid to the sheriff of the county if the judgment debtor is in jail, and every sheriff, constable, marshal, or other ministerial officer who shall receive any such moneys as aforesaid, shall pay the same to the proper magistrate or clerk of court within ten days from the time of receiving the same.

**SEC. 534. [Same.]**—Every magistrate or clerk of court, upon receiving any money on account of forfeited recognizances, fines, or costs accruing or due to the county or state, shall pay the same to the treasurer of the proper county, (except as may be otherwise expressly provided), within ten days from the time of receiving the same. When any moneys shall be paid to a magistrate or clerk of court on account of costs due to individual persons, such magistrate shall pay the same to the persons to whom the same are due, upon demand therefor.

**SEC. 535. [Misdemeanors.]**—No costs shall be paid from the county treasury in any case of prosecution for a misdemeanor, or for surety to keep the peace, except as provided in section five hundred and forty-one.

**SEC. 536. [Felony before a magistrate—Costs.]**—Upon examination before a magistrate on complaint of a felony, whether the accused be held to answer in court or discharged, the magistrate may file with the county clerk a certified transcript of the costs, giving the items of the same, and to whom each is due, and on what account. As early as may be after the filing of such bill as aforesaid, but without assembling for the special purpose, the commissioners of the proper county shall examine into such bill of costs, as to its correctness, justice, and legality, and may, if need be, examine under oath any person upon the subject, which oath may be administered by the county clerk. And it shall be the duty of said commissioners to disallow any item, in whole or in part, of such bill, that shall be found to be unlawfully or needlessly incurred; or, if it shall appear that the complaint was made for a felony, when it should have been for a misdemeanor only, they may, in their discretion, disallow the entire bill, or any part thereof. Said commissioners may order that such bill, or so much thereof as they find to be lawful and just, be paid from the county treasury, whereupon the county clerk shall draw warrants upon the county treasurer for the sums respectively due to each person upon such bill so allowed, which warrants said treasurer shall pay from the county general fund. And the amount of costs so allowed shall be certified by the county clerk, and the certificates filed with the papers in the cause, in the office of the clerk of the district court. And if the defendant shall be convicted, judgment shall be rendered against him for the costs so allowed, in addition to the costs made in the district court.

**SEC. 537. [Costs on conviction or acquittal.]**—Upon the discharge or conviction of the defendant in any case of felony in the district court, it shall be lawful for the clerk of such court to file in the office of the county clerk a bill of the costs not previously allowed by the county commissioners, whereupon, the same shall be examined into, audited, and allowed, and paid in the manner specified in the last preceding section; *Provided*, That nothing in this or the preceding section shall preclude any magistrate or clerk, in any case, from de-

SEC. 536. Costs in prosecution before magistrates are payable only as provided in this and sec. 541. The complaint, although charging a felony, is not conclusive on question of allowance and payment. 10 Neb. 299.

laying the filing of such cost bill for allowance as aforesaid, until it shall be determined whether the same will be collected from the defendant; and no cost bill shall be filed for allowance as aforesaid under the provisions of this section, while there is pending in the cause any proceedings in error, or any unexpired recognizance for replevy of the judgment as provided in section five hundred and twenty-six.

SEC. 538. [**Duty of officers in collecting costs and fines.**].—In any case of indictment for felony, where the defendant shall be convicted, it shall be the duty of the prosecuting attorney, clerk of the court, and sheriff of the county to use all lawful means within the scope of their respective powers, if need be, for the collection of the costs from the defendant, and the fine also, if any shall have been adjudged against him. And when the costs shall have been collected, if the same shall have been allowed for payment from the county treasury as provided in the last preceding section, it shall be the duty of the clerk of the court to certify and pay the same immediately to the county treasurer, together with any fine that may have been collected in the case.

SEC. 539. [**Magistrates' statement of fines.**].—Each and every magistrate shall, on or before the first day of February in each year, make out and deliver to the county clerk of the county in which he may reside, a statement in writing of all fines assessed by him for the year ending on the first day of January next preceding, showing the name of the party and the amount of the fine, the time when assessed, whether execution was issued thereon, and the return upon the same, or if no execution has been issued, the reasons for not issuing the same; and in case no fines have been assessed by such magistrate he shall return that fact, and said statement shall be certified by such magistrate to be a true and correct statement from his docket.

SEC. 540. [**Duty of officers paying or disbursing moneys.**].—Any officer who shall pay to the county treasurer of any county any money collected for any fine, costs, forfeited recognizance, or proceeds of jail labor, shall take therefor the said treasurer's duplicate receipts, one of which shall be immediately filed with the county clerk, and the same shall be by him preserved in his office. All such receipts shall show upon the face thereof, definitely, what the moneys paid in were for, whether for fines, costs, forfeited recognizance, or jail labor, and the sums paid on account of each of said causes, and also the cause in which each item is paid, giving the name of the defendant in each case. All such moneys arising from fines and recognizance, shall be credited by such treasurer to the county school fund, and the costs and proceeds of jail labor he shall credit to the county general fund. Whenever any costs in any criminal case shall be paid from the county treasury, such payment must be made from the county general fund; and when any warrant is drawn by the county clerk upon the treasurer of the county for the payment of such costs, a true record of the same and the definite purpose of every such warrant shall be recorded in his office, showing the cause in which such costs are paid.

SEC. 541. [**Uncollectable—Payment.**].—Magistrates and clerks of courts may furnish to the county clerks of their respective counties certified copies of any cost bills that are not collectable, in cases of misdemeanor and peace warrant causes; and it shall be the duty of each county clerk receiving any such bills to place them upon a separate file and preserve them in his office. At the first meeting of the county commissioners in each county, in the months of April and October, of each year, if it shall appear from the records and files of the county clerk's office that the receipts into the county treasury from the sources mentioned in the last preceding section, from and after the taking effect of this code, are in excess of the amount allowed to be paid from said treasury, in the same time, for costs in criminal cases, including the sums paid for keeping and transporting prisoners in criminal cases, said commissioners shall make an order that a sum equal to such excess be appropriated from the county general fund, for the payment of cost bills, filed as aforesaid, in misdemeanor and peace warrant causes,

or so much thereof as may be necessary to pay all such bills, or parts thereof, may be found lawful and just. And thereupon said commissioners shall audit such bills in the manner required in section five hundred and thirty-six, due notice of which auditing shall be previously given to each magistrate and clerk who shall have filed any such bill, or bills, as aforesaid, and in case the amount of the excess aforesaid is insufficient to pay all of such bills on file, the commissioners shall determine which and what parts of such bills are most equitable to be paid and the county clerk shall draw all necessary warrants upon the county treasurer for the payment of such bills, according to the order of the commissioners, which warrants said treasurer shall pay from the county general fund.

SEC. 541 a. [**Witness fees, how paid.**].—SEC. 1. That the fees of witnesses in criminal cases, in the district court, shall be paid by the county where the indictment is found. [1875 § 1, 83.]

## CHAPTER LI.—SPECIAL PROCEDURE IN CASES OF HOMICIDE.

SEC. 542. [**Notice to governor.**].—Whenever it shall be brought to the knowledge of the coroner or the sheriff of any county in this state, that a murder has been committed within their respective counties, and the person or persons committing such murder are unknown, or, if known, have fled from justice, it shall be the duty of the coroner or sheriff to make the same known to the governor of this state, together with such facts as may have come to his knowledge, going to show by whom such murder was committed, and the whereabouts of the murderer.

SEC. 543. [**Reward for arrest.**].—Upon the receipt of the information prescribed in the preceding section, the governor of the state shall issue his proclamation, offering such reward, not exceeding two hundred dollars, as he shall deem proper, for the arrest of the person or persons committing said crime, and the delivery of said person or persons to the sheriff or jailer of the county where said crime was committed. Upon the trial of any person for whom such reward has been offered, if the presiding judge shall, under his hand and seal of the court, certify to the governor that the person arrested and indicted committed the acts charged in the indictment, the person or persons making the arrest shall be entitled to the reward.

SEC. 544. [**Same, how paid.**].—The governor, upon presentation of the certificate, as provided for in the preceding section, shall give the person holding said certificate an order on the auditor of the state, who shall issue a warrant for the amount.

SEC. 545. [**Death in another county.**].—If any person shall give any mortal blow, or administer any poison to another, in any county within this state, with intent to kill, and the party so stricken or poisoned, thereof, shall die in any other county or state, the person giving such mortal blow, or administering such poison, may be tried and convicted of murder, or manslaughter, as the case may be, in the county where such mortal blow was given, or poison administered.

SEC. 546. [**Death penalty—Execution.**].—That the mode of inflicting the punishment of death, in all cases under this act, shall be by hanging by the neck until the person is dead; and the sheriff, and in case of his death, inability, or absence, the coroner of the proper county in which sentence of death shall be pronounced by virtue of this act shall be the executioner.

SEC. 547. [**Same—Where.**].—When any person shall be sentenced to be hung, such punishment shall be inflicted in the immediate vicinity of the jail, within an inclosure to be prepared for that purpose under the direction of the sheriff, which inclosure shall be higher than the gallows, and so constructed as to exclude the view of persons outside thereof.

SEC. 548. [**Same.**].—In all cases in which the jail in any county shall be of such construction that the sentence of death can conveniently be carried into exe-



cution within its walls, no inclosure need be prepared as is provided in the preceding section, but such execution shall take place within the walls of the jail.

SEC. 549. [**Same.**].—Whenever the sentence of death shall be about to be carried into execution in any county of this state, which may at the time have no jail, it shall be the duty of the sheriff to cause such execution to be conducted agreeably to the provisions of section five hundred and forty-seven, at such convenient place at the county seat as he may select.

SEC. 550. [**Same—Who present.**].—Besides the sheriff and his assistants, the following persons may be present at the execution, and none others: The clergyman in attendance upon the prisoner, such other persons as the prisoner may designate, not exceeding three in number, and such other persons as the sheriff may designate, not exceeding six in number.

SEC. 551. [**Military force.**].—Whenever the sheriff shall deem the presence of a military force necessary to carry into effect the provisions of the four preceding sections, he shall make a written requisition upon the officer of the militia highest in command then in his county, who shall issue the necessary orders to insure a compliance with the requisition of such sheriff.

SEC. 552. [**Return of death warrant.**].—Whenever the sheriff shall inflict the punishment of death upon a convict, in obedience to the command of the court, he shall make return of his proceedings as soon as may be, to the clerk of the court where the conviction was had, and the clerk shall subjoin the return to the record of conviction and sentence.

SEC. 553. [**Insane convict.**].—If any convict sentenced to the punishment of death shall appear to be insane, the sheriff shall forthwith give notice thereof to a judge of the district court of the judicial district, and shall summon a jury of twelve impartial men to inquire into such insanity, at a time and place to be fixed by the judge, and shall give immediate notice thereof to the district attorney.

SEC. 554. [**Inquest in such cases.**].—The judge, clerk of the court, and district attorney shall attend the inquiry. Witnesses may be produced and examined before the jury. The finding shall be in writing, signed by the jury. If it be found that the convict is insane, the judge shall suspend the execution of the convict until the sheriff shall receive a warrant from the governor of the state, directing such execution. The finding of the jury and order of the judge, certified by the judge, shall be by the clerk entered on the journal of the court.

SEC. 555. [**Finding transmitted to governor.**].—The sheriff shall transmit immediately a certified copy of such finding to the governor, who may, as soon as he shall be convinced that the convict has become of sound mind, issue a warrant appointing a time for his execution.

SEC. 556. [**Female convict pregnant.**].—If a female convict sentenced to the punishment of death, appears to be pregnant, the sheriff shall, in like manner, summon a jury of six persons, who on like proceedings being had as in the case of an insane convict, shall return a finding signed by them.

SEC. 577. [**Same—Finding of jury.**].—If by such finding, it shall appear that such female convict is with child, the sheriff shall, in like manner, suspend the execution of her sentence, and shall transmit the finding to the governor, who, on being satisfied that such woman is no longer pregnant, shall issue a warrant appointing a day for her execution.

SEC. 558. [**Conditional reprieve.**].—Whenever the governor may deem it expedient and proper to reprieve any person under sentence of death, under any condition whatsoever, the condition upon which such reprieve is granted shall be specified in the warrant, and the person accepting such conditional reprieve shall subscribe such acceptance upon the warrant containing the conditions of reprieve in the presence of two witnesses, who shall attest the same; and such witnesses shall go before the clerk of the court where such sentence is recorded, and shall prove the same; and the clerk shall thereupon record the warrant of reprieve, together with the acceptance and proof thereof, in the journals of the court, a transcript

of which record shall at all times thereafter be evidence for or against the person accepting such conditional reprieve.

SEC. 559. [**Same.**—If in case of any reprieve the governor shall deem expedient and proper to confine the persons so reprieved in the penitentiary, in so specified in the warrant, the sheriff or other officer having the person reprieved in his custody, shall convey him to the penitentiary in the same manner as other convicts are directed by law to be conveyed; and the warden of the penitentiary shall receive such person, together with the warrant of reprieve, and proceed with such convict as such warrant may direct; and the expenses of transporting such person to the penitentiary shall be allowed and paid as in other cases.]

SEC. 560. [**Condition of reprieve violated.**—If any person reprieved according to section five hundred and fifty-eight, shall violate the conditions which such reprieve is granted, such person shall be proceeded against as in the cases of persons escaping from prison convicted of offenses.]

SEC. 561. [**Convict escapes.**—If any person who has been convicted of murder in the first degree, and sentenced to be hung, shall escape, and not be retaken before the time fixed for his execution, it shall be lawful for the sheriff to re-arrest such person, and commit him to the jail of the county, and make return thereof to the court in which the sentence was pronounced, and thereupon the court shall proceed to fix the time of execution, which shall be carried into effect by the proper officer, as may be provided by law for the execution of persons convicted of murder in the first degree.]

SEC. 562. [**Warrant for death penalty.**—When any person has been duly tried and convicted of the crime of murder in the first degree, before the district court in this state, and, under said conviction, has been sentenced by said court to suffer death, it shall be the duty of the clerk of the court in which said conviction was had, to issue his warrant, under the seal of said court, reciting therein said conviction and sentence, directed to the sheriff of his county, commanding him to proceed at the time and place named in said sentence, to carry the same into execution, by causing the person so convicted and sentenced to be hanged by the neck until he is dead.]

SEC. 563. [**Same—Execution.**—That it shall be the duty of said clerk, upon receipt of said warrant, provided the supreme court, or a judge thereof, has not ordered a suspension of the execution of said sentence, to proceed at the time and place named in said warrant, to carry said sentence into execution, by causing said person so convicted and sentenced to be hanged by the neck until he is dead; and of the manner of his executing said warrant, and his doings thereon, he shall forthwith make return to said clerk, who shall cause said warrant and return to be recorded as a part of said case.]

SEC. 564. [**Proceedings if error prosecuted.**—That in case of error in the supreme court, or any judge thereof, shall have allowed a writ of error in said case and ordered a suspension of the execution of said sentence until said writ of error shall be heard and determined, and, after having heard and determined the same, shall have appointed a day certain for, and ordered the execution of said sentence, it shall be the duty of the clerk of the supreme court to issue his warrant, under the seal of said court, commanding him to proceed to carry said sentence into execution, at the time so appointed by said court, which time shall be stated in said warrant; and upon receipt of said warrant last aforesaid, it shall be the duty of said sheriff to cause said sentence to be executed as aforesaid, at the time so appointed by the supreme court, and to make due return of said warrant, and of his proceedings thereunder, forthwith to said clerk of said district court, who shall cause said warrant and return to be recorded as aforesaid.]

#### CHAPTER LII. — PARDONS, REPRIEVES, AND MITIGATION OF PENALTIES.

SEC. 565. [**Power of governor.**—The governor shall have power to grant reprieves, commutation, and pardons, after conviction, for all offenses, except

n, and to remit fines and forfeiture upon such conditions, and with such reasons and limitations as he may think proper, subject to the regulations provided in this chapter. But no pardon shall be granted until after notice shall first been given for two weeks of such application for a pardon, by publishing said notice in a newspaper printed in the county where the conviction was had, notice shall state name of the applicant, the offense of which he was convicted, in what court, and when convicted, and the time the application will be made, and in case no newspaper is published in such county, then the said notice may be given by posting the same at the court house door, of said county, two weeks before such application; *Provided, however,* That when any person is confined in the state penitentiary, the governor shall have power to pardon such person on account of good conduct, for the purpose of restoring him to civil rights, more than ten days before the expiration of his term of imprisonment, without notice provided for in this section.

**Sec. 566. [Authority over public officers.]**—The governor shall have power to issue his warrant to all proper officers to carry into effect any act which he may see fit to do, and which is regulated in this chapter; and all such officers are required to obey such warrant.

**Sec. 567. [Warrant—Return.]**—Whenever any convict is pardoned or his sentence is commuted, or any fine or forfeiture is remitted, it is the duty of the officer to whom the warrant is directed, as soon as may be after making the same, to make a return in writing thereon to the secretary of state, who shall doings under the same, and sign the same with his name of office; and he must also file in the office of the clerk of the court in which the conviction was had, or in which the sentence was to have been enforced, a certified copy of the warrant and return, the proper entries in relation to which shall be made by the clerk.

**Sec. 568. [Report to legislature.]**—The governor must report to the legislative assembly at its next meeting thereafter, each case of reprieve, commutation, or pardon granted, and the reason therefor, stating the name of the convict, the time of which he was convicted, the sentence and its date, and the date of the reprieve, commutation, or pardon. He must in like manner also report the names of all persons in whose favor fines or forfeitures have been remitted, and the several amounts remitted.

**Sec. 569. [Commutation of time on good behavior.]**—**Sec. 1.** That any convict who is now or who may hereafter be confined in the Nebraska penitentiary, and who shall have no infraction of the rules or regulations of the penitentiary or laws of the state recorded against him, and who performs in a faithful manner the duties assigned to him in an orderly and peaceable manner, shall be entitled to the diminution of time from his sentence as appears in the following table, and *pro rata* for any part of a year where the sentence is for more or less than a year. Of two months on the first year; of two months on the second year; of three months on the third year; of four months on the fourth year, and the diminution of time for each succeeding year of time of their sentence. [1875-1882.]

**Sec. 569 a. [Time lost by misconduct.]**—**Sec. 2.** Whenever a charge of misconduct shall be sustained by the warden and inspectors at their first meeting after said charge or charges shall have been recorded by the warden or his deputy against a prisoner, he shall lose the deduction of time specified in section one of this act, but he may regain by continuous good conduct thereafter a deduction of time not exceeding seventy-five per cent. of said time specified in section one of this act, and as much less as the warden and inspectors may certify to, as a suitable reward for good conduct.

**Sec. 569 b. [Warrant of governor.]**—The governor shall, upon receiving a certificate of good conduct from the warden and inspectors, immediately issue his

SECS. 569 a, b. "An act in relation to persons imprisoned under sentence for offenses against the state of Nebraska." Laws 1875, 32. Sec. 1 of this act supersedes sec. 569 of original act.

warrant for discharge of such convict; said warrant shall in all cases restore the prisoner to civil rights the same as though a pardon had been issued.

SEC. 570. [Repealed acts relating to pardons, Laws 1867, 46; Laws 1871, 80; Commutation act, Laws 1871, 79; Secs. 34, 35, 36, R. S. 11; Chap. 21, R. S. 716; Sec. 109, R. S. 227; Sec. 107, 110, R. S. 340, 341; Sec. 12, R. S. 344; Crim. Code R. S. 592, except Chap. 29; Intoxicating liquor act, Laws 1869, 19; Laws 1867, 12th Sess. Terr., 5; Offenders against chastity, Laws 1869, 81; Laws 1870, 6. Act amending sec. 20 Crim. Code, Laws 1869, 94; Secs. 31-38, 40, 49-50, Laws 1869, 105-108; Sec. 103, Laws 1869, 214; Act to assign counsel to defend indigent prisoners, Laws 1871, 118; Act punishing justices for neglect of certain duties, Laws 1871, 119; Act relative to justices of the peace, Laws 1871, 84; Bird act, Laws 1871, 128, and all acts in conflict; *Provided*, That the validity of such acts so repealed shall be saved and continued to the extent described in section 255.]

SEC. 571. [Provided for taking effect Sept. 1, 1873.]

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## ERRATA.

Page 529, in place of first four lines, insert the following :

Sec. 6. [**False weights and measures—Penalty.**—Any person who shall knowingly keep false weights or measures, and shall buy and sell articles thereby, shall forfeit and pay, upon conviction, a fine of not less than five, nor more than twenty-five dollars, to be recovered before any court having competent jurisdiction.

